

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JEFFREY S. VAUGHN, individually and on behalf of
those class members similarly situated,

Index No. 04 Civ. 8391 (DLC)

Plaintiffs,

-against-

NOTICE OF CROSS-MOTION

LEEDS, MORELLI & BROWN, P.C., LEEDS, MORELLI
& BROWN, L.L.P., LEEDS & MORELLI, LEEDS,
MORELLI & BROWN, PRUDENTIAL SECURITIES,
INC., PRUDENTIAL FINANCIAL, INC., LENARD
LEEDS, STEVEN A. MORELLI, JEFFREY K. BROWN,
and JOHN DOES, JAMES VAGNINI, FREDERIC
DAVID OSTROVE, ROBERT JOHN VALLI, JR.,
DISCRIMINATION ON WALL STREET, INC. and
DISCRIMINATION ON WALL STREET
MANHATTAN, INC. and JOHN DOES, ESQS. 1-10 and
JANE DOES, ESQS. 1-10 a fictitious designation for
presently and unknown licensed attorneys, professionals
and/or unknown persons or entities,

Defendants.

-----X

PLEASE TAKE NOTICE, defendants, LEEDS, MORELLI & BROWN, P.C., (also
incorrectly sued herein as LEEDS, MORELLI & BROWN, L.L.P., LEEDS & MORELLI,
LEEDS, MORELLI & BROWN) and JEFFREY K. BROWN, by their attorneys Rivkin Radler
LLP, will move before the United States District Court, Southern District of New York, the
Honorable Denise L. Cote, U.S.D.J., presiding, at the United States District Courthouse, 500
Pearl Street, New York, New York, on such day as the parties may agree and the Court may
direct, for an Order, pursuant to 9 U.S.C. 9, 9 U.S.C.10 and Fed. R. Civ. P. 12(b)(b), lifting the
Court's stay of the action, confirming the Arbitration Award by the National Association of
Securities Dealers dated May 10, 2007, and upon confirmation, dismissing this action on the

grounds that plaintiff is precluded from bringing a class action in the federal court and for whatever further and different relief that to this Court may seem just, proper, and equitable.

Grounds for Motion

The cross-moving defendants seek confirmation request the Arbitration Award be confirmed under the applicable standard for confirmation in the Second Circuit. Upon confirmation, the action should be dismissed, in its entirety, on the grounds that the Arbitration Award provided a final, binding resolution of the only open issue before the Court, when it concluded that plaintiff is precluded from prosecuting a federal court class action.

Supporting Papers

This motion is based on the pleadings and papers on file in this action, this Notice of Cross- Motion, the Declaration of Shari Claire Lewis, dated September 12, 2007 and the exhibits annexed thereto, the accompanying Memorandum of Law and the evidence and argument presented at a hearing of this motion to be scheduled by the Court.

Dated: Uniondale, New York
September 12, 2007

Respectfully submitted,

RIVKIN RADLER LLP
Attorneys for Defendants,
LEEDS MORELLI & BROWN, P.C., (also
incorrectly sued herein as LEEDS, MORELLI &
BROWN, LLP, LEEDS & MORELLI, LEEDS,
MORELLI & BROWN) and JEFFREY K.
BROWN

By: /s/Shari Claire Lewis (SL-0527)
926 Reckson Plaza
Uniondale, New York 11556-0926
(516) 357-3000
RR File No.: 007559-00005

TO: LIDDLE & ROBINSON, L.L.P.
800 Third Avenue
New York, New York 10022
Facsimile No.: (212) 687-1505

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
1285 Avenue of the Americas
New York, New York 10019-6064
Facsimile No.: (212) 757-3990

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JEFFREY S. VAUGHN, individually and on behalf of
those class members similarly situated,

Index No. 04 Civ. 8391 (DLC)

Plaintiffs,

-against-

LEEDS, MORELLI & BROWN, P.C., LEEDS, MORELLI
& BROWN, L.L.P., LEEDS & MORELLI, LEEDS,
MORELLI & BROWN, PRUDENTIAL SECURITIES,
INC., PRUDENTIAL FINANCIAL, INC., LENARD
LEEDS, STEVEN A. MORELLI, JEFFREY K. BROWN,
and JOHN DOES, JAMES VAGNINI, FREDERIC
DAVID OSTROVE, ROBERT JOHN VALLI, JR.,
DISCRIMINATION ON WALL STREET, INC. and
DISCRIMINATION ON WALL STREET
MANHATTAN, INC. and JOHN DOES, ESQS. 1-10 and
JANE DOES, ESQS. 1-10 a fictitious designation for
presently and unknown licensed attorneys, professionals
and/or unknown persons or entities,

DECLARATION OF
SHARI CLAIRE LEWIS IN
OPPOSITION TO
PLAINTIFF'S MOTION AND
IN SUPPORT OF
DEFENDANTS' CROSS-
MOTION

Defendants.

-----X
I, Shari Claire Lewis, pursuant to 28 U.S.C. § 1746, hereby declare the following:

1. I am a partner in the law firm of Rivkin Radler LLP, attorneys for defendants, LEEDS, MORELLI & BROWN, P.C. (incorrectly sued herein as LEEDS, MORELLI & BROWN, LLP, LEEDS & MORELLI, AND LEEDS, MORELLI & BROWN) and JEFFREY K. BROWN (collectively "Leeds Defendants") in the abovementioned matter. I submit this Declaration in opposition to the motion by plaintiff, JEFFREY VAUGHN, to vacate, (except to the extent that he requests that this Court's stay be lifted), and in support of the cross-motion by the Leeds Defendants to confirm the arbitration award by the National Association of Securities

Dealers ("NASD"), and upon confirmation, dismiss this action on the grounds that plaintiff is precluded from bringing a class action in the federal court.

2. Many exhibits in support of the cross-motion were also submitted by plaintiff in connection with his motion. Nevertheless, for the Court's convenience, copies of all exhibits relied on by the Leeds Defendants are submitted herewith and cross-referenced to plaintiff's submission where appropriate.

3. Annexed hereto as Exhibit "A" is the NASD Arbitration Award dated May 10, 2007, in the arbitration proceeding entitled, *Vaughn v. Leeds, Morelli & Brown, P.C. et. al.* NASD Resolution Arbitration Number 06-00534. It is likewise designated as Exhibit "A" to plaintiff's submission.

4. Annexed hereto as Exhibit "B" is the transcript of a hearing conducted on September 5, 2006 in the matter *Vaughn v. Leeds, Morelli & Brown et. al.*, 04 Civ. 8391, Hon. Judge Denise Cote presiding. It is likewise designated as Exhibit "D" to plaintiff's submission.

5. Annexed hereto as Exhibit "C" is the Settlement Agreement and General Release between plaintiff and codefendant PRUDENTIAL SECURITIES, INC. dated October 27, 1998. It is likewise designated as Exhibit "E" to the plaintiff's submission.

6. Annexed hereto as Exhibit "D" is the transcript of the arbitration hearing conducted before the NASD on April 23, 2007 in the arbitration proceeding entitled, *Vaughn v. Leeds, Morelli & Brown, P.C. et. al.* NASD Resolution Arbitration Number 06-00534. It is likewise designated as Exhibit "B" to the plaintiff's submission.

7. Annexed hereto as Exhibit "E" is the Court's Order of August 12, 2005, in the matter of *Vaughn v. Leeds, Morelli & Brown et. al.*, 2005 U.S. Dist. LEXIS 16792 (S.D.N.Y.

Aug. 12, 2005) Hon. Denise Cote, presiding. It is likewise designated as Exhibit "C" to the plaintiff's submission.

8. Annexed hereto as Exhibit "F" is this Court's Order dated December 27, 2005, in the matter of in the matter of *Vaughn v. Leeds, Morelli & Brown et. al.* 04 Civ. 8391, in which this Court adhered to its prior ruling of August 12, 2005 and the case remained stayed

9. Annexed hereto as Exhibit "G" is this Court's Order dated March 20, 2006 in the matter of in the matter of *Vaughn v. Leeds, Morelli & Brown*, 2006 U.S. Dist. LEXIS 11615 (S.D.N.Y. March 20, 2006) in which this Court dismissed the claims brought against individual defendants, Lenard Leeds, Steven A. Morelli, James Vannini, Frederic David Ostrove and Robert John Valli for lack of personal jurisdiction and otherwise denied the motion to dismiss by the remaining Leeds Defendants with leave to renew following arbitration.

10. Based upon the foregoing exhibits and the accompanying Memorandum of Law it is respectfully requested that Plaintiff's motion be denied, except to the extent that the Court's stay should be lifted, and that the Leeds Defendants' cross-motion be granted in its entirety and for whatever further and different relief that to this Court may seem just, proper and equitable.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: Uniondale, New York
September 12, 2007

/s/Shari Claire Lewis (SL-0527)
SHARI CLAIRE LEWIS

EXHIBIT “A”

NASD Dispute Resolution

www.nasd.com

Northeast Region

One Liberty Plaza • 165 Broadway • 27th Floor

New York NY • 10006-1400 • 212-858-4200 • Fax 301-527-4873



May 10, 2007

Shari Claire Lewis, Esq.
Rivkin Radler LLP
926 Reckson Plaza
Uniondale, NY 11556-0926

Subject: NASD Dispute Resolution Arbitration Number 06-00534
Jeffrey S. Vaughn v. Leeds, Morelli & Brown, P.C., Leeds, Morelli & Brown, L.L.P.,
Prudential Securities, Inc., et al.

Dear Ms. Lewis:

In accordance with NASD Rules, I enclose the decision reached by the arbitrators in the above-referenced matter.

Responsibility to Pay Monetary Award

Pursuant to NASD Rule,¹ the responsible party must pay any monetary awards within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If an award is not paid within 30 days, the responsible party must pay post-judgment interest at the legal rate or as provided in the award by the arbitrators.

Tracking Payment of Award

NASD Dispute Resolution has implemented a system of monitoring and tracking compliance with arbitration awards by members and associated persons. We request prevailing claimants to notify us in writing when their awards have not been paid within 30 days of receipt of the award, and require member firms to certify in writing that they have complied with awards against them or their associated persons. The 30-day period ends on: June 11, 2007.

Written notification concerning award compliance or lack thereof must be directed to:

Jennifer Kozielski
NASD Dispute Resolution
One Liberty Plaza,
165 Broadway, 52nd Floor
New York, NY 10006
212-858-4481 (tel) 301-527-4761 (fax)

¹Customer Code Rule 12904
Industry Code Rule 13904
Old Code Rule 10330(h)

Expedited Suspension Proceedings for Non-Payment of Awards

Members and associated persons who do not comply with an award in a timely manner are subject to expedited suspension proceedings as set forth in Rule 9554, which is part of the NASD Manual.

Right to File Motion to Vacate Award

All awards are **final** and are not subject to review or appeal by the arbitration panel or by NASD Dispute Resolution. Any party wishing to challenge the award must make a motion to vacate the award **in a federal or state court** of appropriate jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. § 10, or applicable state statute. There are limited grounds for vacating an arbitration award, and a party must bring a motion to vacate within the time period specified by the applicable statute. Parties and counsel should consult federal and state statutes and case law to determine the appropriate court, standards, and time limitations in their individual circumstances. NASD Dispute Resolution is not authorized to provide legal advice concerning a motion to vacate.

A motion to vacate, confirm, or modify an arbitration award is a matter only between the parties to the arbitration. NASD Dispute Resolution is not a proper party to post-award motions and should not be named as a party to any post-award motion. However, for cases filed on or after April 12, 2004, if the award contains expungement relief, or if a party seeks expungement relief in court, there may be a duty to name NASD as a party as provided in Rule 2130.

Questions Concerning Award

Please direct any questions regarding this award to me. **The parties must not contact the arbitrators directly.**

Forum Fees

Enclosed is an invoice that reflects the fees assessed and any outstanding balances. Fees are payable to NASD Dispute Resolution.

If a refund is due, it will be sent under separate cover. All refunds, even if payment is made by a non-party on behalf of a party, will be made payable to the party and will be sent in care of the party's representative.

Arbitration Evaluation

As a service organization, the primary goals of NASD Dispute Resolution are the integrity of its process and the satisfaction of its clients. To ensure that we are meeting your needs and satisfying our commitment to you, **we need to hear from you.** If you have not already done so, please take the time to complete an evaluation of our services, the process, and the arbitrator(s) assigned to your case. For your convenience, we have now made it possible for you to evaluate our services using the Internet. Please direct your Web browser to <http://www.nasd.com/arbevaluation>. If you do not have Internet access, or have difficulty completing the evaluation online, you may complete the paper version of the evaluation that was previously provided to you and mail it to the address indicated.

If you need another paper copy of the evaluation form, please contact the undersigned. Whenever possible, however, please use the new online version, as it will help us to review your feedback in a more expeditious and analytical manner. Your feedback is a valuable and necessary component in our efforts to serve you better.

Very truly yours,



Archana Curry
Case Administrator
212-858-4200 Fax: 301-527-4904

KA:CW1:LC09A
idr:4/07

RECIPIENTS:

Jeffrey L. Liddle, Esq., Jeffrey S. Vaughn
Liddle & Robinson, L.L.P., 800 Third Avenue, New York, NY 10022

Gerard E. Harper, Esq., Prudential Equity Group, LLC
Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York,
NY 10019-6064

Shari Claire Lewis, Esq., Leed Morelli & Brown, P.C.,
Rivkin Radler LLP, 926 Reckson Plaza, Uniondale, NY 11556-0926

Shari Claire Lewis, Esq., Leeds Morelli & Brown, L.L.P
Rivkin Radler LLP, 926 Reckson Plaza, Uniondale, NY 11556-0926

Shari Claire Lewis, Esq., Leeds & Morelli
Rivkin Radler LLP, 926 Reckson Plaza, Uniondale, NY 11556-0926

Shari Claire Lewis, Esq., Leeds Morelli & Brown
Rivkin Radler LLP, 926 Reckson Plaza, Uniondale, NY 11556-0926

Shari Claire Lewis, Esq., Lenard Leeds
Rivkin Radler LLP, 926 Reckson Plaza, Uniondale, NY 11556-0926

Shari Claire Lewis, Esq., Steven A. Morelli
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Shari Claire Lewis, Esq., Jeffrey K. Brown
Rivkin Radler LLP, 926 Reckson Plaza, Uniondale, NY 11556-0926

Gerard E. Harper, Esq., Prudential Financial Inc.
Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York,
NY 10019-6064

Shari Claire Lewis, Esq., James Vagnini

Rivkin Radler LLP, 926 Reckson Plaza, Uniondale, NY 11556-0926

Shari Claire Lewis, Esq., Frederic David Ostrove
Rivkin Radler LLP, 926 Reckson Plaza, Uniondale, NY 11556-0926

Shari Claire Lewis, Esq., John Robert Valli, Jr.
Rivkin Radler LLP, 926 Reckson Plaza, Uniondale, NY 11556-0926

Company Office, Discrimination On Wall Street Inc.
Discrimination on Wall Street Inc., One Old Country Road, Carle Place, NY 11514

Company Officer, Discrimination on Wall St. Manhattan,
Discrimination on Wall St. Manhattan Inc, One Old Country Road, Carle Place,
NY 11514

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Jeffrey S. Vaughn (Claimant) vs. Leeds, Morelli & Brown, P.C., Leeds Morelli & Brown, L.L.P., Prudential Securities, Inc., Leeds & Morelli, Leeds Morelli & Brown, Lenard Leeds, Steven A. Morelli, Jeffrey K. Brown, Prudential Financial, Inc., James Vagnini, Frederic Ostrove, John Robert Valli, Jr., Discrimination on Wall Street, Inc., and Discrimination on Wall St. Manhattan, Inc. (Respondents)

Case Number: 06-00534

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member, and Non-Members.

REPRESENTATION OF PARTIES

Claimant Jeffrey S. Vaughn hereinafter referred to as "Claimant": Blaine H. Bortnick Esq., and Jeffrey S. Liddle, Esq., Liddle & Robinson, L.L.P., New York, NY.

Respondents Leeds, Morelli & Brown, P.C. ("Leeds P.C."), Leeds Morelli & Brown, L.L.P. ("Leeds L.L.P."), Leeds & Morelli ("Leeds & Morelli"), Leeds Morelli & Brown ("Leeds Morelli & Brown"), Lenard Leeds ("L. Leeds"), Steven A. Morelli ("S. Morelli"), Jeffrey K. Brown ("Brown"), James Vagnini ("Vagnini"), Frederic David Ostrove ("Ostrove"), and John Robert Valli, Jr. ("Valli"), hereinafter referred to as "Leeds Respondents": Shari Clare Lewis, Esq., Rivkin Radler LLP, Uniondale, NY.

Respondent Prudential Equity Group, LLC ("PEG"), and Prudential Financial, Inc. ("PFI") hereinafter referred to as "Prudential Respondents": Gerard E. Harper, Esq., Paul, Weiss, Rifkind, Wharton & Garrison, New York, NY.

Respondent Discrimination on Wall Street, Inc. ("Discrimination Inc.") did not enter an appearance in this matter.

Respondent Discrimination on Wall St. Manhattan, Inc. ("Discrimination Manhattan") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: February 2, 2006.

Claimant signed the Uniform Submission Agreement: February 2, 2006.

Joint Statement of Answer filed by Leeds Respondents on or about: September 15, 2006.

Leeds P.C. signed the Uniform Submission Agreement: September 15, 2006.

Leeds L.L.P. signed the Uniform Submission Agreement: September 15, 2006.

Leeds & Morelli signed the Uniform Submission Agreement: September 15, 2006.

Leeds Morelli & Brown signed the Uniform Submission Agreement: September 15, 2006.

L. Leeds signed the Uniform Submission Agreement: September 15, 2006.

NASD Dispute Resolution
Arbitration No. 06-00534
Award Page 2 of 5

S. Morelli signed the Uniform Submission Agreement: September 15, 2006.
Brown signed the Uniform Submission Agreement: September 15, 2006.
Vagnini signed the Uniform Submission Agreement: September 15, 2006.
Ostrove signed the Uniform Submission Agreement: September 15, 2006.
Valli signed the Uniform Submission Agreement: September 15, 2006.

Joint Statement of Answer submitted by PEG and PFI on or about: September 15, 2006.

PEG signed the Uniform Submission Agreement: September 15, 2006.
PFI did not sign the Uniform Submission Agreement.

Discrimination Inc. did not file an Answer or sign the Uniform Submission Agreement.

Discrimination Manhattan did not file an Answer or sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following cause of action: violations of NASD rules.

Unless specifically admitted in their Answer, Leeds Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in their Answer, Prudential Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested that the Panel issue an order declaring that Claimant may pursue his class action claims against Respondents in court, reimbursement of his filing fees, costs, and attorneys' fees, and that disciplinary action be brought against the Prudential Respondents.

Leeds Respondents requested dismissal of the Statement of Claim in its entirety.

Prudential Respondents requested dismissal of the Statement of Claim in its entirety, attorneys' fees, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Discrimination on Wall Street, Inc., and Discrimination on Wall Street, Manhattan, Inc., did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the terms of a Settlement Agreement dated October 27, 1988 and, are bound by the determination of the Panel on all issues submitted.

Upon review of the file and the representations made by the Claimant, the undersigned arbitrators (the "Panel") determined that Respondents Discrimination on Wall Street, Inc., and Discrimination on Wall Street, Manhattan, Inc., have been properly served with

NASD Dispute Resolution
 Arbitration No. 06-00534
Award Page 3 of 5

the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed in their entirety; the Settlement Agreement, dated October 27, 1998 precludes Claimant from bringing a Class Action in court.
2. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	Waived
--------------------------	--------

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Prudential Equity Group, LLC is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on either a discovery-related motion on the papers or a contested motion for the issuance of a subpoena. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$1,000.00	= \$2,000.00
Pre-hearing conferences: December 7, 2006	1 session
March 20, 2007	1 session
One (1) Hearing session @ \$1,000.00	= \$1,000.00
Hearing Date: April 23, 2007	1 sessions
Total Forum Fees	= \$3,000.00

NASD Dispute Resolution
Arbitration No. 06-00534
Award Page 4 of 5

1. The Panel has assessed \$3,000.00 of the forum fees jointly and severally to PEG and Leeds P.C.

Fee Summary

1. PEG is solely liable for:	
Member Fees	= \$4,450.00
Total Fees	= \$4,450.00
Less payments	= \$4,450.00
Balance Due NASD Dispute Resolution	= \$ 0.00
2. PEG and Leeds P.C. are jointly and severally liable for:	
Forum Fees	= \$3,000.00
Total Fees	= \$3,000.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,000.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

NASD REGULATION

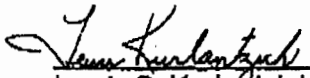
NASD Dispute Resolution
Arbitration No. 06-00534
Award Page 5 of 5

ARBITRATION PANEL

Lewis S. Kurlantzick	-	Public Arbitrator, Presiding Chairperson
Nathan M. Lubow	-	Public Arbitrator
Doris Lindbergh, Esq.	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures



Lewis S. Kurlantzick
Public Arbitrator, Presiding Chairperson

5/1/07

Signature Date

Nathan M. Lubow
Public Arbitrator

Signature Date

Doris Lindbergh, Esq.
Non-Public Arbitrator

Signature Date

May 10, 2007

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
Arbitration No. 06-00534
Award Page 5 of 5

ARBITRATION PANEL

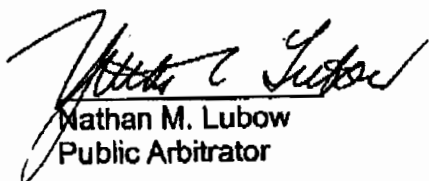
Lewis S. Kurlantzick	-	Public Arbitrator, Presiding Chairperson
Nathan M. Lubow	-	Public Arbitrator
Doris Lindbergh, Esq.	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures

Lewis S. Kurlantzick
Public Arbitrator, Presiding Chairperson

Signature Date


Nathan M. Lubow
Public Arbitrator

5/7/07
Signature Date

Doris Lindbergh, Esq.
Non-Public Arbitrator

Signature Date

May 10, 2007
Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
Arbitration No. 06-00534
Award Page 5 of 5

ARBITRATION PANEL

Lewis S. Kurlantzick	-	Public Arbitrator, Presiding Chairperson
Nathan M. Lubow	-	Public Arbitrator
Doris Lindbergh, Esq.	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures

Lewis S. Kurlantzick
Public Arbitrator, Presiding Chairperson

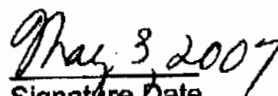
Signature Date

Nathan M. Lubow
Public Arbitrator

Signature Date



Doris Lindbergh, Esq.
Non-Public Arbitrator



Signature Date

May 10, 2007
Date of Service (For NASD Dispute Resolution use only)

STATEMENT OF ACCOUNT

NASD Dispute Resolution
One Liberty Plaza
165 Broadway, 27th Floor
New York, NY 10006

As of: 05/10/2007

TO: Shari Claire Lewis, Esq.
Rivkin Radler LLP
926 Reckson Plaza
Uniondale, NY 11556-0926

FOR: Leed Morelli & Brown, P.C., (NMW)
New York, NY

Invoice#: 06-00534-324-NY

Case Number: 06-00534

Name: Jeffrey S. Vaughn v. Leeds, Morelli & Brown, P.C., Leeds,
Morelli & Brown, L.L.P., Prudential Securities, Inc., et al.

Date	Multiple Party	Description	Fees Owed	Credits	Check No.	Check Date
05/04/2007	*	Forum Fee	\$3,000.00			
Mediation Fee Total:			\$.00			
Arbitration Fee Total:			\$3,000.00			
Total Fees:			\$3,000.00			
Credits To Date:				\$.00		
Credits By Others:				\$.00		
Less Credits To Others:				\$.00		
Less Refunds:				\$.00		
Balance Due:			\$3,000.00			

* Transactions indicate joint and several responsibility

Others responsible for payment:

Prudential Equity Group, LLC

Please Make Check Payable to:

NASD Dispute Resolution
W3690
PO Box 7777
Philadelphia, PA 19175-3690

CW1: RF02A

EXHIBIT “B”

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1

6955VAUC order to show cause
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X

JEFFREY S. VAUGHN,

Plaintiff,

v.

04 civ. 8391 (DLC)

LEEDS, MORELLI & BROWN, P.C.,
et al.,

Defendants.
-----X

September 5, 2006
4:00 p.m.

Before:

HON. DENISE L. COTE,

District Judge

APPEARANCES

LIDDLE & ROBINSON, L.L.P.
Attorneys for Plaintiffs
BY: BLAINE H. BORTNICK

LITCHFIELD CAVO
Attorneys for Leeds, Morelli & Brown
BY: DANIEL HUGHES
KEVIN SPAGNOLI

PAUL WEISS RIFKIND WHARTON & GARRISON, L.L.P.
Attorneys for Defendant Prudential Securities &
Prudential Financial
BY: LIZA VELAZQUEZ
SAM SHELDEN

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

2

6955VAUC order to show cause

(Case called)
THE DEPUTY CLERK: Counsel, for the plaintiff, are you
ready to proceed?

MR. BORTNICK: We are.

THE DEPUTY CLERK: Please state your name for the
record.

MR. BORTNICK: Blaine Bortnick of Liddle & Robinson.

THE DEPUTY CLERK: Who do you have with you at counsel
table?

MR. BORTNICK: I'm sorry. Rebecca Saenger. Your
Honor, Ms. Saenger is not admitted to this court. She is an

Page 1

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12 associate at our firm.

13 THE DEPUTY CLERK: For the defendant, please state
14 your name for the record and the party you represent.

15 MR. HUGHES: Daniel Hughes of the law firm Litchfield
16 Cavo, representing the Leeds Morelli & Brown defendants and
17 with me is Kevin Spagnoli, an associate with my law firm.

18 THE COURT: Thank you.

19 MS. VELAZQUEZ: Liza Velazquez of Paul, Weiss,
20 Rifkind, Wharton & Garrison for the Prudential defendants. And
21 with me is my colleague Sam Shelden.

22 THE COURT: Great. Welcome to everyone.

23 I was presented with an order to show cause and it
24 isn't my practice to sign them ex parte unless there is good
25 reason. Plaintiff's counsel were unavailable last week and so

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1 we put the matter over until today to give everybody an
2 opportunity to be heard.

3 This is a matter that was referred to arbitration
4 sometime ago now, and I thought it might be helpful for me to
5 give the parties a sense of where we stand. And after you hear
6 from me, if counsel want to be heard orally today on the
7 matter, fine. If you want to set a briefing schedule and put
8 this matter over for oral argument at a later date, fine.

9 But, I thought it might be helpful, as I said, to
10 begin with an overview statement from me.

11 In connection with this order to show cause I have
12 been given a set of documents. They include some of the
13 plaintiff's submissions to the New York Stock Exchange and the
14 NASD, including an October 28th 2005 letter to the New York
15 Stock Exchange, a February 2nd, 2006 statement of claim to the
16 NASD, and an August 15th, 2006 letter to the NASD. I think the
17 presentation of the legal issue in those letters is inaccurate
18 and misleading.

19 The plaintiff clearly agreed to the arbitration of his
20 claims and I ruled that the arbitration agreement was valid and
21 enforceable and that legally was not in dispute.

22 I referred this matter to arbitration so that the
23 arbitrator can decide what the intention of the parties was in
24 entering into that arbitration agreement, including deciding
25 what kind of arbitration proceeding the parties had agreed to.

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1 Now, the arbitrator, as I see it, could decide at
2 least three different things and there may be more but, for
3 instance, the arbitrator could decide that the parties had
4 intended to disallow class actions. The arbitrator could
5 decide that the parties had agreed to arbitrate individual
6 claims but had reserved unto themselves the right to litigate
7 class claims. The arbitrator could decide that the party had
8 agreed to arbitrate all claims, individual or class claims.

9 So, the parties disputed what the intention -- what
10 their intention was in entering into this arbitration agreement
11 and I want to refer to the Paul Weiss reply brief on the
12 underlying motions in which Paul Weiss argued, at page 3, that,
13 "It was for the arbitrator, not the Court, to interpret the
14 parties' intentions."

15 And of course Paul Weiss argued, and I expect it will
16 argue to the arbitrator, that, "When one reads the agreement

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17 and when the arbitrator reads the agreement, the arbitrator
18 should conclude that the parties never intended to allow class
19 actions at all."

20 I didn't rule on that. I ruled that it is for the
21 arbitrator to interpret the agreement and decide what the
22 parties' intentions were.

23 Let's deal with a hypothetical. Let us say the
24 arbitrator decides that the arbitration clause and the parties'
25 intention in entering into the arbitration agreement disallows

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1 the plaintiff from bringing any class action lawsuit. That, of
2 course, would allow the plaintiff to continue through the
3 arbitration process with an individual claim. And, depending
4 on what arbitration decision came out of that process -- again,
5 I'm just talking about hypothetical -- somebody would move to
6 vacate or confirm the arbitration award.

7 In that context, in Federal Court here the parties
8 would have the ability, either before me or eventually on
9 appeal, and of course to the extent that the law permitted, to
10 raise issues concerning whether I had erred in sending the
11 matter to arbitration, whether the arbitrator had erred in
12 ruling that no class action litigation or arbitration was
13 permitted, and challenging the merits of the results of the
14 arbitration. Again, to the extent permitted by governing law.

15 Now, should Mr. Vaughn decide that he doesn't want to
16 submit an individual claim to the arbitration proceeding I
17 expect -- but I'm not going to rule on this -- that he can't
18 get a second bite at the apple -- and I see plaintiff's counsel
19 nodding in agreement -- that either forfeiture or waiver rules
20 or res judicata would apply. And that's it.

21 He had an opportunity to arbitrate the claim -- again,
22 we are playing with our hypothetical -- he didn't arbitrate it,
23 end of story.

24 That is, of course, if he were successful on appeal in
25 overturning my decision to send the dispute to arbitration or

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1 the arbitrator's ruling, he would be foreclosed.

2 But this, it seems to me, his decision to make. I
3 can't force him, and shouldn't, to make a particular claim to
4 the arbitrator but there may be consequences from that.

5 Now, I think, if I understand what's happening here,
6 Mr. Vaughn is not submitting his individual claim to the
7 arbitrator. I may not understand this correctly but if that's
8 what's happening, so be it.

9 But, I think I would be derelict not to make sure that
10 I mention the potential ethical issue here for plaintiff's
11 counsel. There may be a serious conflict of interest dividing
12 the plaintiff's interest from those of his counsel on this
13 particular point because if that's the strategy being pursued,
14 Mr. Vaughn may risk losing his right to have his claim ever
15 addressed and lose the right for all recovery.

16 So, I have this order to show cause. I'm happy to
17 hear the parties this afternoon. I'm happy to set a briefing
18 schedule. Or, I'm happy to say that you have my views, do
19 before the arbitrator what you will, and depending on what
20 happens, all in good time I may have some legal issues to
21 confront again.

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22 okay. Mr. Bortnick?
 23 MR. BORTNICK: Yes, your Honor. I have to say I
 24 largely agree with everything that your Honor said here.
 25 The way that the claim was presented initially to the
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 1 New York Stock Exchange before it rejected jurisdiction and
 2 then subsequently to the NASD, was brought, only essentially it
 3 was as a class in the sense that if there was -- if the
 4 arbitration panel were to decide at some point in the future
 5 that the arbitration clause means that class actions have been
 6 waived, then there wouldn't be a one-on-one individual
 7 arbitration. Mr. Vaughn was not intending to bring a
 8 one-on-one individual arbitration.

9 The reason here is not a particular secret. I think
 10 it was even presented to your Honor in papers on the motions
 11 below or at a conference below. Mr. Vaughn, when he settled
 12 his original case with Prudential with Leeds, Morelli
 13 representing him, presented a piece of paper that said I think
 14 these are my damages in a certain amount. And Prudential
 15 agreed to pay that certain amount to Mr. Vaughn less, of
 16 course, the contingency fee portion that went to Leeds, Morelli
 17 and Brown.

18 The theory behind the class action of which Mr. Vaughn
 19 was bringing was fully understanding but something different.

20 When you have a large group of people that are
 21 settling and the allegation is that each of the settling
 22 plaintiffs, the class members had a contingency fee taken from
 23 their settlement and the allegation is unbeknownst to them,
 24 Prudential was paying Leeds, Morelli and Brown quite a
 25 substantial amount of legal fees unbeknownst to them, that that

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 1 amounted essentially to a bribe and, under New York Law, the
 2 class can recover the amount of that payment from, by
 3 Prudential to Leeds, Morelli and Brown, because that is an
 4 amount under New York Law that a party would have been willing
 5 to pay to the plaintiffs in this case.

6 That was the theory of the class action.

7 Mr. Vaughn has always understood all along that in his
 8 particular case on the one-on-one arbitration he recovered,
 9 minus attorney's fees, what he was asking for. And that's not
 10 the theory --

11 So, the theory of the class action was that there was
 12 a secret payment made by Prudential to Leeds, Morelli and Brown
 13 unbeknownst to Mr. Vaughn and the other potential class
 14 plaintiffs and that is the amount of damages that were being
 15 sought.

16 Now, it could be that the -- and if the arbitrators,
 17 the arbitration panel, I think it would be a panel of three,
 18 decide on the other hand that the arbitration clause which
 19 says, Arbitrated pursuant to the rules of the New York Stock
 20 Exchange or the NASD, which in this case have, for all intents
 21 and purposes, I think it is the exact identical rule, no class
 22 actions allowed, we don't hear class actions, you didn't waive
 23 your class action claims, then we're automatically back in
 24 court with the class action.

25 Now, I am certainly --

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1 THE COURT: But if I decide that you did waive your
2 class action claims --

3 MR. BORTNICK: Mr. Vaughn did not have any intention
4 to bring a one-on-one arbitration because he has a damages
5 issue here. And he understands that.

6 However, that being said, I think it is probably,
7 since your Honor has raised the concern -- to go and talk to
8 him one more time and say Mr. Vaughn -- because it is very easy
9 to amend the arbitration claim and just go back and say, well,
10 in the alternative, if the Court -- if the arbitration panel
11 decides class actions have been waived, therefore we bring an
12 individual one-on-one arbitration based on a fraud,
13 essentially, based on that secret agreement.

14 And so, I think it is probably appropriate to give
15 him, based on your Honor's concerns, that we should probably
16 ask him one more time if that's how he would want to proceed in
17 the alternative, recognizing that is the issue that he has had
18 and the decision he made before.

19 It is a very simple change to make in the arbitration
20 statement of claim. And we will go back and do that, but I do
21 think it is fair to point out, your Honor, that since last
22 December the defendants in this case, Prudential and Leeds,
23 Morelli and Brown, have known that the claim, as it is now
24 positioned in front of the NASD, is the claim we have been
25 bringing all along. And it is only last week where they're

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1 suddenly raising an objection to the way we've presented the
2 claim to now the NASD. But, they've known about this since
3 December when they obtained a copy of the New York Stock
4 Exchange statement of claim. They obtained a copy of the NASD
5 statement of claim, not what they were served -- they were
6 served on July 27 and I understand they got it on or about
7 August 1, but we certainly gave them a courtesy copy of it not
8 because we were required to, but because they felt we were --
9 they wanted us to and we agreed.

10 My records don't show whether we did it back in
11 February but we certainly did it in May.

12 So, we've known about this for a long time, so this
13 came as a surprise to us now that they're complaining about the
14 way we presented it.

15 And sort of today is the first day I could even
16 actually address it. I am more than happy to go back and talk
17 to Mr. Vaughn and iterate to him one more time: The Judge has
18 also raised this concern now and I think it is probably
19 appropriate that we do it.

20 And you understand, because I do agree with your
21 Honor, that if it is presented in the way it is presented and
22 there is no one-on-one arbitration claim, if Mr. Vaughn doesn't
23 amend the statement of claim -- and he could do it at a later
24 time, he doesn't have to do it now, he could do it within the
25 context of what has been presented to the NASD -- but, if he

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1 chooses not to proceed one on one, then I agree with your
2 Honor, he would not be able to come back and make some kind of

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3 claim at a future date. He would lose it forever. I think
4 that is absolutely correct.

5 THE COURT: I don't think the formulation in the
6 papers that you have submitted to the New York Stock Exchange
7 or the NASD has been, in each instance, consistent with the
8 description of what I put on the record today. But, that is
9 for you and the defendants to litigate before the arbitrator.

10 MR. BORTNICK: The arbitrators have a copy of the
11 order, I believe. They should. No arbitration panel has been
12 appointed yet. The last letter you saw from us to the NASD,
13 there is a form letter that goes out from the NASD from the
14 processing center and it says here is a list of arbitrator
15 skills, customer complaints, this or that, and you can rank 1
16 through 4 and we will try to accommodate you.

17 And then we wrote back saying we don't think these fit
18 what we want. And we wrote George Friedman as the director of
19 arbitration because we didn't want a data inputter to look at
20 the letter and just toss it but we wanted to have some kind of
21 personal attention. We copied them on it because that's how we
22 see this claim.

23 The arbitration panel will have that order and they
24 can make a decision as to whether it should be allowed to be a
25 class action. And, in that case, they'll say take it back to

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1 Court.

2 But, I guess then because of what your Honor says, you
3 probably -- I guess I should probably request to let me go
4 ahead and have one more conversation with our client and tell
5 him what your Honor said. I think it is the right thing to do.

6 THE COURT: Do the defendants wish to be heard?

7 MR. HUGHES: Just briefly, your Honor. Daniel Hughes
8 on behalf of the Leeds defendants.

9 I received the papers from plaintiff's counsel and
10 their filings on August 1st of '06, the last date that
11 Mr. Bortnick stated.

12 The reason we are here is because the submission to
13 the NASD which is presently pending states: Accordingly,
14 Vaughn respectfully requests that the arbitrators issue an
15 order and decision declaring that the Vaughn may pursue his
16 class action claims against defendants in court and directing
17 defendants to withdraw their objections.

18 So, this, to us, did not seem to be an objective
19 presentation of your Honor's decision for the arbitrators to
20 decide what is the intent of the parties to arbitrate.

21 We are faced now with an August 15th deadline and I
22 was wondering if we could figure out a way to extend that
23 deadline for Mr. Bortnick to file additional papers and for us
24 to have an additional extension to respond to those papers.

25 THE COURT: I am not going to deal with arbitration

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1 scheduling issues.

2 Is there anything else?

3 MS. VELAZQUEZ: Your Honor, Liza Velazquez from Paul
4 Weiss for the Prudential defendants.

5 Your Honor, we have been here before you on these
6 issues three times now. I believe your Honor's August 12th,
7 2005 order was crystal clear: Vaughn must arbitrate his claims

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8 against Prudential and submit to the arbitrators the question
9 of the format of how that arbitration should proceed.

10 He went to the NASD late last year. We weren't
11 provided with a copy of those papers at the time they were
12 presented to the NASD but we subsequently learned that --
13 excuse me. He went to the NYSE. We subsequently learned that
14 he asked the NYSE to overrule this Court's order that
15 notwithstanding the August 12th, 2005 order he can go ahead and
16 come back to court and basically do what the F.A.A. doesn't
17 permit him to do, which is to get an interlocutory appeal but
18 from an arbitral forum.

19 Then, your Honor, we were served with his NASD papers
20 on or about August 1st.

21 Respectfully, I would say to Mr. Bortnick that there
22 was no proceeding until we were served with those papers, so we
23 could not approach the Court about what had transpired until we
24 were served with the papers on August 1st.

25 Again, in our view, he is asking the NASD to overrule
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1 this Court and to send him back to court with his claims even
2 though the Court has already decided those claims are
3 arbitrable.

4 I submit that the three options that your Honor set
5 forth earlier today are, they're far afield from what
6 Mr. Bortnick and plaintiff are requesting from the NASD. He is
7 not submitting his claims against Prudential or any of these
8 parties to arbitration at all. Instead, he is rehashing what
9 has already been litigated before this Court and we
10 respectfully submit to your Honor that it would be unfair and
11 prejudicial to Prudential to have to relitigate those issues
12 again before the NASD.

13 THE COURT: Well, I don't think that the plaintiff's
14 papers, Mr. Vaughn's papers have correctly framed the issue for
15 the arbitrators, but I don't think defense counsel are either.

16 The issue that was in dispute and that I submitted to
17 arbitration was for an interpretation of the arbitration
18 agreement, and that was for the arbitrator to decide the
19 parties' intentions. I did not rule that everything had to be
20 subject to arbitration. I contemplated, therefore, that the
21 arbitrator, in deciding the parties' intentions, might decide
22 that the agreement to arbitrate does not foreclose the
23 plaintiff from coming to court and litigating a class action.

24 But the plaintiff is not, in its submissions to the
25 arbitrators to date, has not clearly stated the issue for the
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1 arbitrators to decide about the parties' intent and the scope
2 of that intent.

3 But, I think it would be wrong for the defendants to
4 characterize it the way you are today in court to suggest that
5 the arbitrators' hands are bound in some way such that they
6 couldn't rule in interpreting the parties' intent that the
7 plaintiff has the right to come to court and proceed on a class
8 action. And I refer you, again, to your reply brief on the
9 underlying motion practice.

10 So, I don't think there is a need for further argument
11 or briefing of this issue.

12 It seems to me that what I'm going to do -- we have a
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13 court reporter here because this is complicated -- is that I'm
14 going to endorse the order to show cause to reflect that after
15 having heard from all parties, I decline to issue the order to
16 show cause without prejudice to any parties' rights to argue at
17 a later point in time that their rights have been infringed in
18 some way. And then we will just see how the arbitration
19 process plays itself out.

20 If a party misrepresents or misleads the arbitrator,
21 or doesn't ask for the appropriate relief, I don't know how
22 that will play out in court before me later but everybody's
23 rights are preserved. You can challenge whatever happens
24 through the arbitration process when it is ripe for such a
25 challenge.

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1 Not hearing any objection, I will so endorse the order
2 to show cause. If you want to wait afterwards, we can get you
3 a copy of that endorsement.

4 Since you are all here, I thought I would just address
5 the 54(B) motion that's pending before me too.

6 This motion is governed by the rule and Second Circuit
7 authority interpreting the rule. And I have looked most
8 recently at O'Bert, 331 F.3d at 40 to 41, a Second Circuit
9 2003, decision. It indicates, among other things, that where
10 the decision to direct the entry of a partial judgment in
11 advance of the final adjudication of all the claims must be
12 considered in light of the goal of judicial economy as served
13 by the historic federal policy against piecemeal appeals.

14 And, with this policy in mind, the power to enter a
15 partial judgment should be exercised sparingly, bearing in mind
16 that not all dismissals of individual claims should be
17 immediately appealed even if they are, in some sense, separable
18 from the remaining unresolved claims.

19 The power should generally be reserved for the
20 infrequent harsh case and certification should be granted only
21 if there exists some danger of hardship or injustice through
22 delay which would be alleviated by immediate appeal.

23 I'm going to deny the 54(B) motion.

24 First of all, there is no showing of error to suggest
25 to me that it, because of that, needs immediate review. The

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1 plaintiff is arbitrating the claims against the five dismissed
2 individual defendants. And the issues with respect to those
3 five dismissed individual defendants will be reviewed in the
4 ordinary course through the confirmation or vacating
5 proceedings that will follow the arbitration decision.

6 I haven't seen any showing of hardship or injustice
7 and I do not find, principally for the reasons pointed out by
8 defense counsel and their opposition, that judicial economy
9 would be served by a 54(B) finding at this point.

10 Thanks so much and good luck to all of you.

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EXHIBIT “C”

SETTLEMENT AGREEMENT AND GENERAL RELEASE

Made and entered into this ____ day of October 1998, by and between Jeffrey Vaughn and Prudential Securities Incorporated ("PSI").

WHEREAS, Vaughn has alleged certain claims arising out of Vaughn's employment with PSI and separation therefrom; and

WHEREAS, PSI denies all such claims; and

WHEREAS, PSI and Vaughn have agreed to amicably resolve any and all such claims;

NOW, THEREFORE, in full and complete settlement of such claims and in consideration of the mutual promises and covenants set forth herein, Vaughn and PSI agree as follows:

1. Separation From Employment. Vaughn's last day of employment at PSI shall be October 23, 1998.

2. Payment by PSI. Upon the expiration of seven (7) days following Vaughn's execution of this Settlement Agreement and General Release (the "Agreement"), PSI shall pay to Vaughn, in a single lump-sum payment, the total agreed-upon amount of Two Hundred Thousand Dollars and No Cents (\$200,000.00), as payment in full for all alleged personal injury or other non-wage claims, including, but not limited to, any claims for emotional distress and general, special and consequential damages. The parties acknowledge and agree that PSI shall file a form 1099-misc reflecting the above payment.

3. Medical Benefits. PSI agrees to continue Vaughn's health plan coverage through October 31, 1998. Thereafter, Vaughn will be eligible to continue the plan coverage pursuant to the terms of the Consolidated Omnibus Budget Reconciliation Act ("COBRA"). If Vaughn elects to continue health plan coverage pursuant to COBRA, PSI will pay Vaughn's COBRA premiums through and including April 30, 1999, or until Vaughn obtains other employment or is eligible for other group health plan coverage, whichever comes first. Thereafter, Vaughn will be responsible for the payment of any COBRA premiums through the remainder of Vaughn's eligibility.

4. Release by Vaughn. In consideration for PSI's commitment to the various arrangements described in the preceding paragraphs, and in lieu of any other benefits, as a full and final settlement, Vaughn hereby releases and discharges PSI, its parent, divisions, subsidiaries and affiliates and their current and former directors, officers, shareholders, agents and employees, and each of their predecessors, successors, and assigns (hereinafter "the Company"), from any and all claims and causes of action (except for the benefits specifically set forth in this Agreement) arising out of or related to Vaughn's employment or separation from employment, including, but not limited to, any claims for salary, bonuses, severance pay, vacation pay or any benefits under the Employee Retirement Income Security Act (except for vested benefits which are not affected by this Agreement), sexual harassment, or discrimination based on race, color, national origin, ancestry, religion, marital status, sex, sexual orientation, citizenship status, pregnancy, medical condition or disability (as defined by the Americans with Disabilities Act, or any other state or local law), age, or any other unlawful discrimination (under the Age Discrimination in Employment Act, as amended by the Older Workers Benefit Protection Act of 1990, Title VII of the Civil Rights Act, as amended, or any other federal, state, or local laws), breach of implied or express contract, breach of promise, misrepresentation, negligence, fraud, estoppel, defamation, infliction of emotional distress, retaliation, whistleblower rights, violation of public policy or wrongful or constructive discharge, and for attorneys' fees, that Vaughn, his heirs, executors, administrators, successors, and assigns now have, ever had or may hereafter have, whether known or unknown, suspected

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or unsuspected, up to and including the date of this Agreement. Vaughn further agrees, promises and covenants that, to the maximum extent permitted by law, neither he, nor any person, organization, or other entity acting on his behalf has or will file, charge, claim, sue, or cause or permit to be filed, charged or claimed, any action for damages or other relief (including injunctive, declaratory, monetary relief or other) against the Company involving any matter occurring in the past up to the date of this Agreement, or involving or based upon any claims, demands, causes of action, obligations, damages or liabilities which are the subject of this Agreement (other than an action to enforce the terms herein).

5. No Admission of Liability. Neither this Agreement, nor anything contained herein shall be construed as an admission by the Company that it has in any respect violated or abridged any Federal, State, or local law or any right or obligation that it may owe or may have owed to Vaughn. No final findings or final judgments have been made and Vaughn does not purport and will not claim to be a prevailing party, to any degree or extent, nor will this Agreement or its terms be admissible in any proceeding other than in a proceeding for breach of the terms contained herein.

6. Cooperation by Vaughn. Vaughn agrees to cooperate with and make himself readily available to PSI or its General Counsel, as PSI may reasonably request, to assist it in any matter, including giving truthful testimony in any litigation or potential litigation, over which Vaughn may have knowledge, information or expertise.

7. Confidential and Proprietary Information of PSI. Vaughn understands and agrees that all books, records, documents and information, whether written or not, pertaining to PSI's business activities, are the confidential and proprietary property of PSI (hereinafter referred to as "trade secrets and confidential and proprietary information"). Vaughn warrants, covenants, and agrees that he will not disclose any of PSI's trade secrets and confidential and proprietary information to any person or entity not employed, owned by, or otherwise affiliated with PSI. Vaughn further agrees that he shall not be entitled to copies, in any form, of such trade secrets and confidential and proprietary information and that he shall immediately return to PSI any copies of such information currently in his possession.

8. Reemployment or Reinstatement. Vaughn agrees not to apply for employment or reemployment with PSI, and that PSI has no obligation, contractual or otherwise, to rehire, reemploy or recall him in the future.

9. Nondisparagement. Vaughn represents that he has not and agrees that he will not in any way disparage PSI, its current and former officers, directors and employees, or the Company, or make or solicit any comments, statements, or the like to the media or to others that may be considered to be derogatory or detrimental to the good name or business reputation of any of the aforementioned parties or entities.

10. Testimony Required by Law or Regulatory Authority. Vaughn further agrees that he will not at any time discuss any matter concerning PSI with anyone adverse or potentially adverse to PSI on any matter including employment claims or customer claims, without the prior written consent of Counsel for PSI. Nothing contained herein, however, shall preclude Vaughn from discussing any matter concerning PSI with any governmental regulatory or self-regulatory agency. Further, if required by a governmental regulatory agency or self-regulatory agency to provide testimony or information regarding the PSI, Vaughn will cooperate with said regulatory agency. If compelled to testify by a validly served subpoena in any legal proceeding or by regulatory authority, Vaughn will testify truthfully as to all matters concerning his employment at PSI.

11. Confidentiality of Agreement. Vaughn agrees not to disclose or cause to be disclosed, either directly or indirectly, to any person or organization, except to his legal and

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financial advisor(s), or as required by law, or governmental regulatory or self-regulatory authority, any information regarding the amount of, terms of, or facts or circumstances underlying this Agreement.

12. Indemnification. Vaughn expressly warrants and represents to PSI that he will indemnify PSI against, and hold PSI harmless from, the tax consequences, if any, of PSI's not withholding taxes from, or reporting to the Internal Revenue Service as income, the aforementioned payment, including, but in no way limited to, any and all taxes, interest, and/or penalties incurred in connection therewith.

13. Entire Agreement and Severability. The parties hereto agree that this Agreement may not be modified, altered or changed except by a written agreement signed by the parties hereto. The parties acknowledge that this constitutes the entire agreement between them superseding all prior written and oral agreements. If any provision of this Agreement is held to be invalid, the remaining provisions shall remain in full force and effect.

14. Arbitration. Any claim or controversy arising out of or related to this Agreement or the interpretation thereof will be settled by arbitration under the then prevailing constitution and rules of the New York Stock Exchange, Inc., or the National Association of Securities Dealers, Inc. Judgment based upon the decision of the arbitrators may be entered in any court having jurisdiction thereof. The governing law of this Agreement shall be the substantive and procedural law of the State of New York.

15. Breach of Agreement. Should Vaughn violate any provision of this Agreement, the Company may apply for appropriate relief. In any proceeding to enforce the terms of this Agreement, the Agreement may be introduced under seal in order to maintain its confidentiality. Vaughn understands and agrees that the damage to the Company due to any such breach will be extremely difficult to determine. Because of this difficulty, Vaughn agrees that in the event of a finding of such breach, he will forfeit to PSI all amounts received pursuant to this Agreement, and he shall indemnify PSI for any and all costs incurred in connection with any such recovery, including reasonable attorneys' fees. Notwithstanding any such relief, all of the other terms of this Agreement, including, without limitation, Vaughn's release of claims, shall remain in full force and effect. The remedies provided for in this provision shall not be construed to be exclusive and do not bar any other claims for relief.

16. Voluntary Execution. Vaughn acknowledges that he has carefully read this Agreement and understands all of its terms including the full and final release of claims set forth above. Vaughn further acknowledges that he has voluntarily entered into this Agreement; that he has not relied upon any representation or statement, written or oral, not set forth in this Agreement; that the only consideration for signing this Agreement is as set forth herein; that the consideration received for executing this Agreement is greater than that to which he may otherwise be entitled; and that this document gives him the opportunity and encourages him to have this Agreement reviewed by his attorney and tax advisor. Vaughn also acknowledges that he has been afforded at least twenty-one days to consider the release provision contained herein and that he has seven days after signing this Agreement to revoke it in writing. Accordingly, no payments required under this Agreement shall be made until the expiration of seven days following Vaughn's execution of the Agreement.

Vaughn Settlement Agreement
October 1998
Page 4

IN WITNESS WHEREOF, the parties hereto evidence their agreement by their
signatures.

PRUDENTIAL SECURITIES INCORPORATED

Date:

Eric Schmitt
BY:

Date:

10/27/98 Jeffrey Vaughn
JEFFREY VAUGHN

EXHIBIT “D”

[Page 1]

ARBITRATION PROCEEDINGS

AMERICAN ARBITRATION ASSOCIATION

-----X

In the Matter of the

Arbitration between

JEFFREY S. VAUGHN,

Claimant,

-and-

LEEDS, MORELLI & BROWN, P.C.,

LEEDS, MORELLI & BROWN, LLP,

PRUDENTIAL SECURITIES INC.,

et al.,

Respondents.

-----X

One Liberty Plaza

New York, New York

Monday, April 23, 2007

B E F O R E:

LEWIS KURLANTZICK, Chairman

NATHAN LUBOW, ARBITRATOR

DORIS LINDBERGH, ARBITRATOR

Reported by:

William Byrne

1		1	
2	APPEARANCES:	2	PROCEEDINGS
3	For the Claimant:	3	THE CHAIRMAN: This is the
4	LIDDLE & ROBINSON, ESQS.	4	hearing of April 23, 2007 NASD case
5	800 Third Avenue	5	0600534 Jeffrey S. Vaughn versus
6	New York, New York 10022	6	Leeds Morelli & Brown et al. We are
7	BY: BLAINE H. BORTNICK, ESQ.	7	going to start with the introduction
8	REBECCA A. SAENGER, ESQ.	8	of the arbitration panel. I am the
9		9	chairman, Lewis Kurlantzick.
10	For the Respondent:	10	ARBITRATOR LUBOW: Nathan
11	PAUL, WEISS, RIFKIND, WHARTON & GARRISON, ESQS.	11	Lubow, the arbitrator.
12	1285 Avenue of the Americas	12	ARBITRATOR LINDBERGH: Doris
13	New York, New York 10018	13	Lindbergh, the arbitrator.
14	BY: GERARD E. HARPER, ESQ.	14	THE CHAIRMAN: I have no
15	LIZA M. VELAZQUEZ, ESQ.	15	additional disclosures to make at
16	SAMUEL M. SHELDON, ESQ.	16	this point.
17		17	ARBITRATOR LINDBERGH: I have
18	For the Respondent:	18	no disclosures.
19	Leeds Morelli & Brown	19	ARBITRATOR LUBOW: I have no
20	RIVKIN RADLER, ESQ.	20	disclosures to make.
21	EAB Plaza Uniondale	21	THE CHAIRMAN: We will go
22	New York 11556	22	around the room and if everybody
23	BY: SHARI CLAIRE LEWIS, ESQ.	23	would indicate your name and your
24		24	relationship to the parties, please.
25		25	MR. VAUGHN: Jeffrey Vaughn,
	[Page 2]		[Page 4]
1	ALSO PRESENT:	1	
2	KENNETH THYNE, ESQ.	2	the claimant in this arbitration.
3	JULIA HENICK RIGBY, ESQ.	3	MR. BORTNICK: Blaine
4		4	Bortnick, I am with the law firm of
5		5	Liddle & Robinson. With me today
6		6	is my colleague Robin Saenger. I
7		7	represent the claimant in this
8		8	action.
9		9	Present in the room today, is
10		10	Mr. Kenneth Thyne, who is also
11		11	counsel for Mr. Vaughn. Also Mr.
12		12	Vaughn's wife is sitting there in
13		13	the back, she is not a participant.
14		14	MS. LEWIS: My name is Shari
15		15	Lewis, and I am from the law firm of
16		16	Rivkin Radler. I represent the
17		17	respondent Leeds Morelli & Brown in
18		18	this action.
19		19	MR. HARPER: My name is
20		20	Gerard Harper. I am from the law
21		21	firm of from Paul Weiss Rifkind
22		22	Wharton & Garrison. I represent
23		23	Prudential Securities, the
24		24	respondent. And with me are my
25		25	colleagues Liza Velazquez and Samuel
	[Page 3]		[Page 5]

[2] (Pages 2 to 5)

1	Sheldon as well as a representative	1	administer or enforce. If any
2	of my client Julia Rigby who is the	2	matter comes to the attention of the
3	assistant general counsel, and I	3	panel during this panel's
4	have a paralegal here as well.	4	participation in this proceeding
5	THE CHAIRMAN: Do you have	5	that this panel has reason to
6	any objection to Ms. Vaughn being	6	believe may constitute a violation
7	present during the proceeding?	7	of the association rules or the
8	MR. HARPER: I don't.	8	federal securities laws, the panel
9	THE CHAIRMAN: We need to at	9	may initiate a referral of the
10	this point to obtain conformation	10	matter to the association for
11	from the parties or the	11	disciplinary investigation.
12	representatives of the their	12	If we make any such referral
13	acceptance of the panel's	13	it will only be initiated after this
14	composition.	14	dispute has been either settled or
15	MR. BORTNICK: Yes, we accept	15	otherwise disposed of or after a
16	for the claimant.	16	final award has been rendered.
17	MS. LEWIS: Yes, we accept.	17	We have been selected to serve
18	MR. HARPER: Prudential	18	as neutral arbitrators to decide the
19	Securities accepts for the	19	matter, we are not NASD dispute
20	respondent.	20	resolution employees. Pursuant to
21	THE CHAIRMAN: We have	21	Canon 1 of the ABA, AAA Code of
22	submitted our properly executed	22	Ethics we as neutral arbitrators
23	oaths of arbitrators to the NASD	23	have the duty of conducting this
24	dispute resolution staff. This	24	proceeding with fairness and
25	[Page 6]	25	[Page 8]
1	controversy has been submitted to	1	integrity. That duty extends to all
2	the panel for hearing in accordance	2	parties and to this process,
3	with the Code of Arbitration	3	therefore, on behalf of the panel I
4	Procedure.	4	respectfully request that all
5	The panel is authorized to	5	parties and their counsel or
6	determine each of the matters set	6	representatives refrain from
7	forth in the parties' statements and	7	engaging in any conversations or
8	filed with the NASD dispute	8	contact with the panel members
9	resolution unless the law directs	9	except within this room and in the
10	otherwise. All the awards rendered	10	presence of all parties' counsel or
11	pursuant to the code will be final	11	representatives.
12	and will not be subject to an	12	We thank you for your
13	appeal.	13	anticipated cooperation in that
14	We would appreciate it if no	14	respect.
15	interruptions are made during an	15	I need to now administer the
16	individual's testimony. Parties are	16	oath to those who are or are likely
17	entitled to make objections, cross	17	to be witnesses. I don't know who
18	examine and redirect witnesses, and	18	they are. I assume Mr. Vaughn, and
19	the arbitrators may ask questions as	19	I don't know whether that includes
20	they deem appropriate.	20	Mr. Morelli but if it does please
21	The submission of the matter	21	raise your right hand.
22	to arbitration will not preclude any	22	(The chairman swore in the
23	right of the NASD that it otherwise	23	proposed witnesses: Mr. Vaughn and
24	would be authorized to adopt,	24	Mr. Morelli.)
25	[Page 7]	25	[Page 9]

[3] (Pages 6 to 9)

1		1	
2	THE CHAIRMAN: The arbitrators	2	been killed in support of that
3	have read the pleadings that have	3	effort, but it all boils down to one
4	been submitted by the parties.	4	thing what was the intention of the
5	These papers along with executed	5	parties to the settlement agreement,
6	submission agreements will be marked	6	when Mr. Vaughn signed a September
7	and received into evidence as	7	agreement back in October of 1998
8	Arbitrator's Exhibit 1. We intend	8	where he settled his matter with
9	to take a break midmorning,	9	Prudential Securities. That's all.
10	midafternoon and for lunch.	10	The agreement contains an
11	However, if any of the participants	11	arbitration clause, and the
12	have need to take a break at any	12	arbitration clause says any dispute
13	other time or for any other reason	13	arising out of the agreement shall
14	please let us know, and we will be	14	be arbitrated pursuant to the rules
15	happy to cooperate with you.	15	of the New York Stock Exchange or
16	Each party may make an opening	16	the NASD. Both forms have the exact
17	statement. It should be limited to	17	same rule. For purposes of the NASD
18	what the parties intend to prove and	18	we are talking about the rule that
19	should not be a presentation of the	19	prohibits class actions from being
20	evidence or of the merits of the	20	arbitrated and, in fact, furthermore
21	case with respect to documentary	21	as pointed out in the statement of
22	evidence. That evidence will be	22	claim that industry parties such as
23	marked for identification shown to	23	Prudential are in fact prohibited
24	the opposing parties for review and	24	from enforcing agreements to compel
25	possible objection to its	25	arbitration at the NASD of class
	[Page 10]		[Page 12]
1	admissibility.	1	action claims. That's why we have,
2	The panel will rule on any	2	for example, class actions that are
3	objections asserted and determine	3	dealing with securities, fraud and
4	whether the document will be	4	so forth.
5	received in evidence. The parties	5	Typically, as I'm sure this
6	and attorneys are responsible for	6	panel well knows if somebody has a
7	providing copies of all proposed	7	typical customer case they have to
8	exhibits to the other parties and to	8	arbitrate it, but class actions are
9	the panel. Parties are encouraged	9	heard in court. There are the
10	to avoid repetitive arguments and	10	arbitration agreements when a
11	parties and counsel please direct	11	customer signs up with a company
12	all objections to the panel and not	12	like Prudential or Merrill Lynch or
13	to each other.	13	anywhere else.
14	We are now ready for the	14	The same thing here. We have
15	parties' opening statements	15	an arbitration clause it doesn't
16	beginning with the claimant.	16	include class actions, nevertheless,
17	MR. BORTNICK: Good morning.	17	the federal court has sent to
18	We are here for what I hope is going	18	arbitration the question of the
19	to be a very short hearing because	19	meaning of the arbitration clause.
20	we are here to decide just one issue	20	Now the court suggested there
21	as directed by the federal court. I	21	are three possible interpretations.
22	know that the panel has seen	22	One of which I think everybody
23	briefing upon briefing upon	23	probably agrees in the room, at
24	briefing, and lots of trees have	24	least from the parties' side it
25	[Page 11]	25	[Page 13]

[4] (Pages 10 to 13)

1		1	
2	doesn't apply, which would be that	2	Chairman. Good morning, and thank
3	you could have a class arbitration.	3	you for agreeing to serve.
4	I'm certain that Mr. Friedman	4	I feel something like deja vu
5	would never allow a class	5	all over again because we have made
6	arbitration to go forward with the	6	this argument and heard Mr. Bortnick
7	NASD. The NASD is simply not	7	make this argument over and over
8	equipped to handle a class action.	8	again.
9	So the question is whether Mr.	9	Let me give you a timeline
10	Vaughn intended to waive his rights	10	here, just briefly. Mr. Vaughn
11	to bring a class action when he	11	entered into a retainer agreement
12	signed the settlement agreement.	12	with what was then Leeds Morelli in
13	You will hear Mr. Vaughn	13	January of 1998 and he agreed in
14	testify today, the answer is clearly	14	that retainer agreement to pay a
15	no. And that will basically be all	15	legal fee and Leeds Morelli agreed
16	the evidence you are going to hear.	16	to attempt to negotiate a
17	Mr. Vaughn's testimony is going to	17	settlement.
18	be short, and I'm interested to see	18	Mr. Vaughn went through a
19	what the defense will be, but we	19	process that we will hear about, and
20	will find out. And that's it.	20	he asked for \$200,000 from
21	In conclusion of the hearing,	21	Prudential Securities and an
22	which I don't even think should go	22	extension of his Cobra rights. And
23	beyond the morning, I think it will	23	he got \$200,000 and an extension of
24	be clear that Mr. Vaughn did not	24	his Cobra rights. And so he got
25	intend to waive class action, his	25	every nickel he asked for in the
	[Page 14]		[Page 16]
1		1	
2	rights to bring a class action, and	2	mediation.
3	as such his class action against	3	Almost six years to the day of
4	Prudential and by extension Leeds	4	when he executed that settlement
5	Morelli & Brown should go back to	5	there arrives a class action with
6	court.	6	Mr. Vaughn's name on the north side
7	Leeds Morelli & Brown is here	7	of a caption and a bunch of names on
8	only because even though they are	8	the south side of the caption
9	not a party to the agreement the	9	including my client. So we made
10	federal court ruled they get the	10	pursuant to the rules that permit us
11	benefit of whatever the arbitration	11	to make it under the NASD rules,
12	clause is and how it is interpreted	12	specifically permit us in that
13	as a codefendant with Prudential.	13	circumstance to go into court and
14	They are here even though they	14	compel that he arbitrate pursuant to
15	are not a party to the settlement	15	an arbitration clause that was in
16	agreement, but because they actually	16	the settlement agreement.
17	are a codefendant in the class	17	And in response to that motion
18	action and, therefore, get the	18	to compel my friend, Mr. Bortnick,
19	benefits, to the extent there are	19	made exactly the arguments that he
20	any benefits of an arbitration	20	is making today. He made exactly
21	clause that Prudential Securites	21	the argument that the NASD rules
22	gets.	22	forbid me to do what I did; he made
23	Thank you.	23	exactly that -- he argued that the
24	THE CHAIRMAN: Proceed.	24	rules of the NASD expressly and
25	MR. HARPER: Thank you, Mr.	25	unambiguously state that a claim
	[Page 15]		[Page 17]

[5] (Pages 14 to 17)

1		1	
2	submitted as a class action is not	2	York State Stock Exchange than I do,
3	eligible for arbitration.	3	that you can't, it doesn't have
4	Simply put because they are	4	jurisdiction over parties other than
5	not eligible for arbitration this	5	members. And Mr. Vaughn had named
6	court is the appropriate forum. It	6	Leeds Morelli and a bunch of lawyers
7	is beyond doubt that the NASD	7	from that firm and a bunch of John
8	prohibits the submission of claims	8	Does and so forth.
9	and so, therefore, under those rules	9	So the New York Stock Exchange
10	this court cannot compel an	10	said we have no jurisdiction over
11	arbitration.	11	this claim. And so back to court
12	That is what Mr. Vaughn argued	12	goes Mr. Vaughn and Mr. Bordnick.
13	in front of Judge Coate and Judge	13	And once more they make exactly the
14	Coate responded that the arbitration	14	same arguments that they are making
15	clause in the agreement contains	15	now to this panel, and that they had
16	sweeping language concerning the	16	previously made to Judge Coate.
17	scope of the questions committed to	17	So we went to Judge Coate and
18	arbitration, as it commits to	18	said -- they went to the one flora
19	arbitration any claim or controversy	19	that won't hear claims against
20	arising out of or related to the	20	nonmembers but the NASD does, so go
21	this agreement, meaning the	21	to the NASD. And in that Judge
22	settlement agreement or even the	22	Coate again sent Mr. Vaughn off to
23	interpretation thereof.	23	arbitration in December of '05. And
24	And Vaughn claims that the	24	then in May of '06, five months
25	arbitration clause is inconsistent	25	later or so, Mr. Vaughn files once
	[Page 18]		[Page 20]
1		1	
2	with the rules of the NASD, but this	2	again an identical piece of paper
3	interpretation contradicts the clear	3	saying the rules of the NASD forbid
4	statement that the arbitration	4	class actions, therefore, the
5	clause applies to any claim. Even	5	promise I made to arbitrate my claim
6	assuming that Mr. Vaughn was right	6	is invalid as to my class action
7	and the applicable arbitration	7	complaint, which is exactly the
8	rulings do apply and indeed forbid	8	argument that he had made to Judge
9	class arbitration, that it would be	9	Coate the first time and the second
10	plausible to interpret the	10	time.
11	arbitration clause required that all	11	And so we went into Judge
12	the claims be arbitrated and to	12	Coate. We said, Judge Coate, he is
13	disallow class action with no	13	asking you ladies and gentlemen to
14	further qualifications or caveats.	14	be the Second Circuit and to
15	The next thing that happened	15	overrule your ruling. And one of
16	was that Mr. Vaughn filed a claim	16	the interesting things that Judge
17	identical to the claim he has filed	17	Coate said was that she had before
18	here with the New York State Stock	18	her three documents. She had before
19	Exchange. And the New York State	19	her the original letter to the NA --
20	Stock Exchange has a rule that it	20	rather to the New York State Stock
21	will not exercise jurisdiction. It	21	Exchange setting forth the statement
22	is a plain black and white	22	of claim and the description
23	rule certainly known to my friend	23	following the ruling that she had
24	Mr. Bortnick who spends more time in	24	made.
25	these halls than I do and in the New	25	Second she had before her the
	[Page 19]		[Page 21]

[6] (Pages 18 to 21)

1		1	
2	claim, the statement of claim in	2	And I think, said Judge Coate,
3	this case, which again describes in	3	the presentation of the legal issue
4	detail or purports to, the issue	4	in those letters is inaccurate and
5	before this panel and the ruling and	5	misleading.
6	intention of Judge Coate.	6	So we are just -- where does
7	Finally, she had before her a	7	that leave us? I think what it
8	letter that was from Ms. Saenger on	8	leaves us with is that -- and I'll
9	behalf of Mr. Vaughn, that says that	9	make it now in an opening statement
10	because we've gotten the lists with	10	rather than later on interrupt the
11	your names on them among others, and	11	testimony -- I object, if I could do
12	that the letter says the skills and	12	it now, to any testimony from Mr.
13	knowledge options listed in the	13	Vaughn.
14	terms regarding the arbitration	14	First, on the grounds there is
15	selection process do not match the	15	no parole evidence permissible here
16	issue before the NASD in this case.	16	because the contract is clear and
17	Mr. Vaughn's statement of	17	unambiguous.
18	claim presents a very narrow issue	18	Second, because the whole
19	of whether he waived his right to a	19	thrust of his testimony, as Mr.
20	class action by signing the	20	Bortnick describes it, is that he
21	settlement agreement with Prudential	21	wants to go back to court to
22	Securities. Therefore, we request	22	litigate his claim. And that has
23	an arbitration possessing knowledge	23	already been adjudged something he
24	of the law of arbitration. And to	24	cannot do by Judge Coate.
25	that comment on September when we	25	Third, it is an integrated
	[Page 22]		[Page 24]
1	went into court, and asked Judge	1	agreement as to which parole
2	Coate what is going on here, she	2	evidence as to one portion or
3	said a couple of interesting things.	3	another portion is prohibited.
4	She said, first, claimant	4	Fourth, because the standard
5	clearly agreed to arbitration of his	5	or the argument that is being -- the
6	claims and I ruled that the	6	evidence that is being offered for,
7	arbitration agreement was valid and	7	is that Mr. Vaughn did not give a
8	enforceable, and that legally was	8	knowing and voluntary waiver of his,
9	not in dispute. In other words,	9	quote, right to a class action.
10	under Judge Coate's ruling there is	10	Well, the lawyers in the room
11	no -- as a matter of law Mr. Vaughn	11	are familiar with the concept of
12	must arbitrate his individual claim.	12	knowing and voluntary waiver and
13	She then said in connection	13	what it applies to is substantive
14	with the order to show cause you	14	rights. If I'm going to waive my
15	have been given a set of documents	15	right to a privilege against
16	that include some of the plaintiff's	16	self-incrimination, my waiver of
17	submissions to the stock exchange	17	that right must be known and
18	and to the NASD including a February	18	voluntary. But there are scores of
19	and October 28th letter to the stock	19	cases, and we cite them that say
20	exchange, and a February 2nd letter,	20	that a waiver of a right to class
21	a statement of claim to the NASD,	21	action is simply a waiver of a
22	and the August 15, 2006 letter to	22	procedural means by which a
23	the NASD, the one I just read from	23	substantive right is adjudicated,
24	involving the arbitration.	24	and that the class action itself is
25	[Page 23]	25	[Page 25]

[7] (Pages 22 to 25)

1		1	
2	not a substantive right.	2	THE CHAIRMAN: Perhaps you
3	And so, therefore, the	3	were not so offended.
4	standard of knowing involuntary	4	MR. HARPER: I don't offend
5	waiver has nothing to do with the	5	easily, when you have been at this a
6	enforceability of an arbitration	6	while.
7	agreement.	7	THE CHAIRMAN: Why don't you
8	The argument that the claimant	8	move on.
9	is making here is that he doesn't	9	MR. HARPER: I'm reading from
10	have to arbitrate his claim, and he	10	the judge's statement, page 5 now.
11	is seeking a declaratory judgment	11	Now should Mr. Vaughn decide
12	from you to that effect. He does	12	that he doesn't what to submit an
13	not even plead what his claim is.	13	individual claim to the arbitration
14	In other words, there is no	14	proceeding I expect, and I'm not
15	grievance he brings before you other	15	going to get a ruling on this now
16	than that he doesn't want to	16	but that he can't get a second bite
17	arbitrate, which is exactly what	17	at the apple, and I see plaintiff's
18	Judge Coate said he must do.	18	counsel nod in agreement, that a
19	And if you read Judge Coate's	19	forfeiture or waiver rules or res
20	September 5th transcript of '06, she	20	judicata would apply, and that's it.
21	warns Mr. Bortnick, she warned Mr.	21	He had an opportunity to
22	Bortnick that if he failed to file a	22	arbitrate the claim. Again, we are
23	claim that lacked the underlying	23	playing within our hypothetical, he
24	grievance here, the grievance	24	didn't arbitrate it and end of the
25	alleged in the class action, that	25	story. Mr. Bortnick can read into
	[Page 26]		[Page 28]
1		1	
2	Mr. Vaughn would forever waive and	2	that whatever he wants. I read it,
3	be barred from asserting that claim	3	I think it is pretty clear and so
4	and --	4	I'll end as I began.
5	MR. BORTNICK: I'm going to	5	This is now the fourth or
6	object. That is not flat-out untrue	6	fifth time I have been in front of
7	what she said. I have never, I	7	decision makers saying that Mr.
8	don't think I can remember objecting	8	Vaughn promised to arbitrate, and he
9	to an opening statement but that is	9	is here. And Judge Coate said that
10	flat-out untrue, and I know what	10	that's why he must arbitrate, it is
11	occurred because she was talking	11	legal and enforceable and he must
12	about an ethical issue and she	12	arbitrate his individual claim.
13	wanted to make sure Mr. Vaughn	13	And what Mr. Bortnick and Mr.
14	understood that if he lost in this	14	Vaughn are here to solicit from the
15	forum on this issue and he didn't	15	panel is a ruling that he need not
16	submit an individual claim then it	16	do so. And with the utmost respect
17	was gone. But it was never about	17	to this panel, the panel has no
18	the fact that if he won in this, it	18	right to do that.
19	was always understood he would have	19	THE CHAIRMAN: Thank you, Mr.
20	his claim in court and I strongly	20	Harper.
21	object to that.	21	MS. LEWIS: Thank you. I
22	MR. HARPER: I've never	22	would like to thank you all for your
23	interrupted an opening statement in	23	time today. I would like to start
24	my life, and I thought your	24	first directing your attention to
25	instruction --	25	what I hope will be an easily
	[Page 27]		[Page 29]

[8] (Pages 26 to 29)

1 disposed of matter, and that's the
2 bad faith inclusion of claims
3 against the individual respondent in
4 this proceeding.
5
6 Separate and apart from the
7 arbitration ruling in the decision
8 by Judge Coate filed on March 20,
9 2006, which is annexed to our
10 submission as Exhibit G by Judge
11 Coate determined that the individual
12 respondents named in this procedure
13 were dismissed from the case not
14 because of the arbitration clause
15 but because of the lack of
16 jurisdiction. And in response to a
17 cross-motion to extend their time to
18 serve these defendants in that
19 matter, the court indicated that the
20 plaintiff had shown a complete
21 disregard and disinterest in getting
22 them in as parties in this action.
23 So whether or not or whatever
24 this panel concludes as to the
25 arbitrability of this matter, these
[Page 30]

1 respondents cannot be sent back to
2 federal court. With due deference
3 to this panel there is simply no
4 authority for you to overrule the
5 jurisdictional determination of a
6 federal court that there is no
7 jurisdiction over these individuals.
8
9 That defense was included in
10 the answer served by the individual
11 respondent. It was fully briefed in
12 the moving papers. It was ignored
13 in the opposition by the claimant
14 and required our reply, when not
15 given multiple opportunities no
16 possible basis has or can be
17 advanced for including these
18 individual defendants and they have
19 been dismissed from the federal
20 action in an application for
21 declaratory judgment saying that
22 they can go back to court against
23 them.
24 And I would submit to you that
25 not only should they be dismissed
[Page 31]

1 but those individuals should be
2 given all costs that they incurred
3 in defending what was brought from
4 nothing more than intimidation.
5 That's the first part. And again
6 because there has been no opposition
7 to that application, I presume that
8 that looking at this decision,
9 looking at the submissions by the
10 parties, that can be fairly easily
11 determined.
12
13 The remainder of the
14 application that applies to this
15 declaratory judgment for permission
16 to go back, which would apply
17 against the law firm or potentially
18 and one of the respondents, I
19 certainly join in the able argument
20 that was put forward by Mr. Harper
21 in terms of what has already been
22 determined by Judge Coate. There is
23 a requirement under the law that if
24 we are going to eviscerate an
25 arbitration provision, it has to be
[Page 32]

1 said with positive assurance that
2 the parties did not intend to the
3 matter to be submitted for
4 arbitration.
5
6 The only thing that we can say
7 with positive assurance in this case
8 is based upon the facts that there
9 is a settlement clause in the
10 settlement agreement that applies to
11 this dispute that requires any claim
12 or controversy regarding the
13 agreement or its interpretation to
14 be determined by arbitration under
15 the rules of either the NASD or the
16 New York State Stock Exchange.
17 Now, any claim or dispute --
18 excuse me, any claim or controversy
19 is self-evident as to its meaning on
20 its face. And any effort to
21 introduce testimony contrary to the
22 clear meaning of any claim or
23 controversy must be arbitrated is
24 impermissible under the standard
25 contract interpretation laws and
[Page 33]

[9] (Pages 30 to 33)

1
2 against established policy which
3 requires positive assurance that
4 something is not included, but we
5 have even more positive assurance
6 here based upon Judge Coate's
7 decision that said no matter what
8 else, the first decision, her
9 statement on the record later on, no
10 matter what else Mr. Vaughn's
11 individual claims must be
12 arbitrated.
13 She said there were three
14 other possibilities, as Mr. Bortnick
15 said which all agree that one of
16 them is not likely, that the NSAD
17 will take a class arbitration.
18 The other two options that she
19 recognized as plausible did not
20 include Mr. Vaughn going back on his
21 individual claim.
22 And the next thing that we
23 have positive assurance about and we
24 have it because in their submission
25 Mr. Vaughn stated that his

[Page 34]

1
2 individual claim was identical to
3 and part of the class action claim,
4 that there is nothing that's
5 fictionally out there as a class
6 action that he can go back for, back
7 to court on and still arbitrate as
8 an individual claim because they are
9 one and the same.
10 So clearly what we have, and I
11 think part of the issue here, is
12 that Mr. Vaughn is asking, framing
13 the wrong question, it is not
14 whether, as Mr. Harper suggested
15 there is intentional waiver of the
16 class action but whether or not the
17 parties intended Mr. Vaughn to
18 arbitrate his claims. And that has
19 already been determined, and any
20 parole evidence by Mr. Vaughn or my
21 client Mr. Morelli, would be
22 inappropriate.
23 The phrase is apparent and
24 clear on its face, and to allow any
25 party or their attorney to attack

[Page 35]

1
2 the meaning or even address the
3 meaning of a clear phrase in the
4 contract would make all contracts
5 unenforceable. Because everybody
6 could come in and say, oh, I changed
7 my mind and what I really intended
8 was this or that. It is just here
9 the language is so clear based upon
10 the agreement, which I suggest is
11 the piece of evidence in this case.
12 It would be inappropriate. That's
13 all I have to say right now.
14 THE CHAIRMAN: Thank you, Ms
15 Lewis.
16 We are ready for the
17 presentation of evidence starting
18 with the claimant.
19 MR. BORTNICK: Thank you, I
20 call Mr. Vaughn.
21 MR. HARPER: I take it for
22 the record, Mr. Chair, that you have
23 overruled my objection.
24 THE CHAIRMAN: No, I want to
25 to hear what he has to say before

[Page 36]

1
2 and I also want to hear from the
3 other side. It is not no one has
4 responded to your argument.
5 MR. HARPER: Fine, I beg your
6 pardon.
7 MR. BORTNICK: At this time I
8 think it it is probably easier if I
9 just introduce the first three
10 exhibits before we get going with
11 Mr. Vaughn.
12 THE CHAIRMAN: Fine.
13 MR. BORTNICK: Exhibit Number
14 1 is going to be the opinion and
15 order of Judge Coate dated August
16 12, 2005.
17 Exhibit Number 2 is going to
18 be the transcript of the hearing in
19 front of Judge Coate dated September
20 5, 2006.
21 And Exhibit 3 is going to be
22 the settlement agreement between Mr.
23 Vaughn and Prudential dated October
24 1998.
25 MR. HARPER: We have one

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[10] (Pages 34 to 37)

<p>1 signed by both parties.</p> <p>2 MR. BORTNICK: That's fine,</p> <p>3 we would be happy to do that.</p> <p>4 MR. HARPER: Why don't we use</p> <p>5 that one.</p> <p>6 MR. BORTNICK: Okay.</p> <p>7 JEFFREY S. VAUGHN,</p> <p>8 having been first duly sworn by a the</p> <p>9 Chairman was examined and testified as</p> <p>10 follows:</p> <p>11 (Exhibit Number 1, opinion and</p> <p>12 order of Judge Coate dated August</p> <p>13 12, 2005 marked for identification,</p> <p>14 as of this date.)</p> <p>15 (Exhibit Number 2, transcript</p> <p>16 of the hearing in front of Judge</p> <p>17 Coate dated September 5, 2006 marked</p> <p>18 for identification, as of this</p> <p>19 date.)</p> <p>20 (Exhibit Number 3, settlement</p> <p>21 agreement between Mr. Vaughn and</p> <p>22 Prudential Securities, dated October</p> <p>23 1998 marked for identification, as</p> <p>24 of this date.)</p> <p>25 [Page 38]</p>	<p>1 J. Vaughn</p> <p>2 THE CHAIRMAN: I will permit</p> <p>3 it, overruled.</p> <p>4 Q. Start with "I did not."</p> <p>5 A. "I did not rule that</p> <p>6 everything had to be subject to</p> <p>7 arbitration. I contemplated, therefore,</p> <p>8 that the arbitrator in deciding the</p> <p>9 parties intentions might decide that their</p> <p>10 agreement to arbitrate does not foreclose</p> <p>11 the plaintiffs from coming to court and</p> <p>12 litigating a class action."</p> <p>13 Q. If you turn over to page 15 --</p> <p>14 A. Yes.</p> <p>15 Q. -- and just read the next</p> <p>16 sentence beginning at line 3 with "but"</p> <p>17 just the one sentence.</p> <p>18 A. "But I think it would be wrong</p> <p>19 for the defendants to characterize it the</p> <p>20 way you are today, to suggest that the</p> <p>21 arbitrators' hands are bound in some way</p> <p>22 such that they couldn't rule in</p> <p>23 interpreting the party's intent that the</p> <p>24 plaintiff has the right to come to court</p> <p>25 and proceed on a class action."</p> <p>[Page 40]</p>
<p>1 J. Vaughn</p> <p>2 EXAMINATION BY</p> <p>3 MR. BORTNICK:</p> <p>4 Q. Mr. Vaughn, on Exhibit Number</p> <p>5 2, the transcript, I would like you to</p> <p>6 turn to page 14.</p> <p>7 A. Yes.</p> <p>8 Q. Line 19 of the transcript that</p> <p>9 begins with "I did not," can you read that</p> <p>10 through the next two sentences?</p> <p>11 A. I did not rule --</p> <p>12 MR. HARPER: I object. You</p> <p>13 can read this as well as the witness</p> <p>14 is the witness reading what Judge</p> <p>15 Coate said to the panel.</p> <p>16 THE CHAIRMAN: Proceed.</p> <p>17 MR. BORTNICK: We just heard</p> <p>18 here two attorneys telling this</p> <p>19 panel what the judge said. I</p> <p>20 thought it would be a much better</p> <p>21 idea, it is a much better idea, it</p> <p>22 is very short let's put it in front</p> <p>23 of the panel and read it out loud,</p> <p>24 so everybody can hear it what the</p> <p>25 judge said why we are here.</p> <p>[Page 39]</p>	<p>1 J. Vaughn</p> <p>2 Q. Thank you. Mr. Vaughn, now,</p> <p>3 you had actually filed a class action in</p> <p>4 court?</p> <p>5 A. Yes.</p> <p>6 Q. If you turn to Arbitrator's</p> <p>7 Exhibit 1, is this the amended complaint</p> <p>8 that you filed in front of Judge Coate?</p> <p>9 A. Yes.</p> <p>10 Q. And the date of this amended</p> <p>11 complaint is what?</p> <p>12 Is there an affidavit of</p> <p>13 service attached to it?</p> <p>14 A. Yes.</p> <p>15 Q. When was it served?</p> <p>16 MS. LEWIS: Objection. There</p> <p>17 has been a legal determination as to</p> <p>18 the service on various parties. In</p> <p>19 fact the legal determination that</p> <p>20 five of the parties were not served.</p> <p>21 I do not believe that this witness</p> <p>22 has any personal knowledge of</p> <p>23 service of any legal document.</p> <p>24 MR. BORTNICK: The only</p> <p>25 purpose here is to just, so that it</p> <p>[Page 41]</p>

[11] (Pages 38 to 41)

<p>1 J. Vaughn</p> <p>2 is all clear that at the time Judge</p> <p>3 Coate made these statements on the</p> <p>4 record, she had in front of her the</p> <p>5 complaint that Mr. Vaughn had filed</p> <p>6 a class action complaint and then</p> <p>7 she thereafter made the statement</p> <p>8 many times. That's all.</p> <p>9 THE CHAIRMAN: We will note</p> <p>10 that.</p> <p>11 Q. Mr. Vaughn, I'm not sure you</p> <p>12 stated your full name for the record,</p> <p>13 would you please state your full name.</p> <p>14 A. Jeffrey Sherwood Vaughn.</p> <p>15 Q. Just very briefly, what's your</p> <p>16 educational background?</p> <p>17 A. Finance at Pace in 1985.</p> <p>18 Q. You received what degree?</p> <p>19 A. BA in finance.</p> <p>20 Q. And there came a time where</p> <p>21 you became employed by Prudential</p> <p>22 Securities?</p> <p>23 A. That's correct.</p> <p>24 Q. When was that?</p> <p>25 A. In February of '85.</p> <p style="text-align: right;">[Page 42]</p>	<p>1 J. Vaughn</p> <p>2 that were done on the floor of the</p> <p>3 exchange. Breaks meaning discrepancies</p> <p>4 between transactions that went on the</p> <p>5 prior day. Or like I said up to some</p> <p>6 point, up until the settlement I was the,</p> <p>7 one of the key people in making sure the</p> <p>8 company had no exposure.</p> <p>9 Q. This was a back office</p> <p>10 function?</p> <p>11 A. Yes, this was a back office</p> <p>12 function.</p> <p>13 Q. And how long did you remain in</p> <p>14 this job?</p> <p>15 A. For maybe four years I would</p> <p>16 say.</p> <p>17 Q. And then what was your next</p> <p>18 job?</p> <p>19 A. The next job was trade support</p> <p>20 specialist, which I actually worked on the</p> <p>21 block trading desk working with the</p> <p>22 traders and the back office in P&S, and</p> <p>23 pretty much a liaison between the traders</p> <p>24 and the floor of the exchange and our</p> <p>25 Prudential block office.</p> <p style="text-align: right;">[Page 44]</p>
<p>1 J. Vaughn</p> <p>2 Q. And what was the firm known as</p> <p>3 at the time?</p> <p>4 A. Pru Bache, I believe.</p> <p>5 Q. Prudential Bache?</p> <p>6 A. Yes.</p> <p>7 Q. Were you licensed in the</p> <p>8 securities industry at any time such as a</p> <p>9 Series 7 or any other security license?</p> <p>10 A. No.</p> <p>11 Q. Have you ever received a</p> <p>12 security license?</p> <p>13 A. No.</p> <p>14 Q. What was your first job with</p> <p>15 Prudential Securities?</p> <p>16 A. Operations clerk.</p> <p>17 Q. And what did those job</p> <p>18 responsibilities entail?</p> <p>19 A. Pretty much to take care of</p> <p>20 all back office issues that were</p> <p>21 pertaining to trades that were done the</p> <p>22 prior day or any day before the settlement</p> <p>23 of trades.</p> <p>24 Q. Can you give me an example?</p> <p>25 A. Pretty much whatever breaks</p> <p style="text-align: right;">[Page 43]</p>	<p>1 J. Vaughn</p> <p>2 Q. The block trading desk is a</p> <p>3 large number of shares being traded at one</p> <p>4 time?</p> <p>5 A. Yes.</p> <p>6 Q. For example, 20,000 shares of</p> <p>7 IBM that would be a block trade?</p> <p>8 A. Yes.</p> <p>9 Q. A big one?</p> <p>10 A. No, a small one.</p> <p>11 Q. And this again was a back</p> <p>12 office function?</p> <p>13 A. Yes, it was.</p> <p>14 Q. And how long did you remain</p> <p>15 employed with Prudential?</p> <p>16 A. For a total of about 13 years.</p> <p>17 Q. When did you leave?</p> <p>18 A. In '98 I want to I believe it</p> <p>19 was November of '98.</p> <p>20 Q. Was it before or after you</p> <p>21 signed Exhibit 3 the settlement agreement?</p> <p>22 A. After.</p> <p>23 Q. And you stayed with Prudential</p> <p>24 through all of its name changes?</p> <p>25 A. Yes, I did.</p> <p style="text-align: right;">[Page 45]</p>

[12] (Pages 42 to 45)

1 J. Vaughn	1 J. Vaughn
2 Q. But it was always as a broker	2 THE CHAIRMAN: When he
3 dealer?	3 retained Leeds Morelli & Brown to
4 A. Yes.	4 prosecute the discrimination case.
5 Q. The respondent party here	5 A. Meaning where?
6 today?	6 Q. In court.
7 A. Meaning.	7 A. In court.
8 Q. Prudential Financial?	8 Q. Had you had exposure to the
9 A. Now it is Prudential	9 New York Stock Exchange, the NASD or any
10 Financial, when I left it was Prudential	10 securities industry arbitration up until
11 Securities.	11 that point?
12 Q. Now, did there come a time	12 A. No.
13 where you retained the law firm of Leeds	13 Q. Other than the proceeding we
14 Morelli & Brown to represent you?	14 are in today and events that led up to
15 A. Yes, I did.	15 this particular proceeding, have you ever
16 Q. You heard the opening	16 had any exposure to New York State Stock
17 statement from Mr. Harper which said it	17 Exchange or NASD arbitration?
18 was January of 1998; does that sound about	18 A. Yes.
19 right?	19 Q. What was your exposure?
20 A. That's when I signed the	20 A. Well, number one, there was a
21 retainer, that's correct.	21 mediation hearing about my particular case
22 Q. When did you first start	22 within the rest of the people who had come
23 talking with Leeds Morelli & Brown?	23 forward from Prudential. And then after
24 A. Probably back in November the	24 that there was a -- I had to testify
25 prior year.	25 against Tony Carranate who came in and
[Page 46]	[Page 48]
1 J. Vaughn	1 J. Vaughn
2 Q. And just very briefly what was	2 wanted to or I guess he was going after
3 the subject matter that you asked Leeds	3 Prudential for whatever reasons and I had
4 Morelli & Brown Leeds to represent you in?	4 to testify against him.
5 A. Briefly it was a hostile work	5 Q. In arbitration? He was part of
6 environment, a discrimination issue.	6 the management?
7 Q. Were you the only person	7 A. He was part of the management.
8 represented by Leeds Morelli & Brown who	8 Yes.
9 were employees of Prudential with respect	9 Q. He was suing Prudential?
10 to this matter?	10 A. Yes.
11 A. No.	11 Q. And you were brought in as a
12 Q. How many were there?	12 witness for Prudential?
13 A. Initially it probably started	13 A. Yes.
14 out to be about maybe 50 people and as it	14 Q. Have you ever had any other
15 went on it ended up to be about 400 or a	15 exposure to the arbitration process?
16 little more maybe.	16 A. No.
17 Q. Over the same issue?	17 Q. Now, did there come a time
18 A. Yes.	18 when your case settled?
19 Q. Was it your intention at that	19 A. Yes.
20 time to file a lawsuit?	20 Q. And is Exhibit 3 your
21 A. Yes.	21 settlement agreement?
22 Q. Where were you intending to	22 A. Yes, it is.
23 file a lawsuit at that time?	23 Q. Do you recall when you saw
24 MS. LEWIS: At what point in	24 your settlement agreement for the first
25 time?	25 time?
[Page 47]	[Page 49]

{13} (Pages 46 to 49)

<p>1 J. Vaughn</p> <p>2 A. Yes, I do.</p> <p>3 Q. When was that?</p> <p>4 A. It was at a fundraiser for</p> <p>5 Carl McCall at Tavern on the Green</p> <p>6 probably in November of '98.</p> <p>7 Q. Was it the day you signed your</p> <p>8 agreement?</p> <p>9 A. Yes, it was.</p> <p>10 Q. So I just want to be clear,</p> <p>11 you saw it for the first time that was the</p> <p>12 day you signed it?</p> <p>13 A. The first time I saw my</p> <p>14 agreement was in the bathroom of Tavern on</p> <p>15 the Green that's where I signed it.</p> <p>16 Q. You saw it for the first time</p> <p>17 and signed it in the bathroom at Tavern on</p> <p>18 the Green?</p> <p>19 A. Yes.</p> <p>20 Q. Who showed it to you?</p> <p>21 A. Jeffrey Brown.</p> <p>22 Q. He was one of the partners of</p> <p>23 Leeds Morelli & Brown?</p> <p>24 A. Yes.</p> <p>25 Q. What were the circumstances of</p> <p style="text-align: right;">[Page 50]</p>	<p>1 J. Vaughn</p> <p>2 it to some point and just made it clear to</p> <p>3 me that this is somewhat of a gag order</p> <p>4 for the most part. Just, you can't say</p> <p>5 anything, and you can't come back to</p> <p>6 Prudential and go public which I guess at</p> <p>7 the time we were trying, we wanted to mak</p> <p>8 this public. And they said that if you</p> <p>9 sign this you can't go public. That was</p> <p>10 the gist of the conversation.</p> <p>11 Q. Any other or anything else</p> <p>12 that you discussed?</p> <p>13 A. No.</p> <p>14 Q. Just that point?</p> <p>15 A. Yes.</p> <p>16 Q. If you would take a look at</p> <p>17 paragraph 14 of your of Exhibit 3 the</p> <p>18 settlement agreement --</p> <p>19 A. Yes.</p> <p>20 Q. -- where it where it says</p> <p>21 arbitration.</p> <p>22 A. Yes.</p> <p>23 Q. Did you discuss that clause at</p> <p>24 all with Mr. Brown?</p> <p>25 A. No.</p> <p style="text-align: right;">[Page 52]</p>
<p>1 J. Vaughn</p> <p>2 your seeing it in the bathroom?</p> <p>3 A. We were invited there by Leeds</p> <p>4 Morelli & Brown to it was a fundraiser for</p> <p>5 Carl McCall he was running for New York</p> <p>6 State Comptroller, and we were invited and</p> <p>7 not only myself but a few other people</p> <p>8 were introduced to their settlement</p> <p>9 agreements there for the first time. So I</p> <p>10 just --</p> <p>11 Q. Mr. Vaughn, were you sitting</p> <p>12 at table and he said here is your</p> <p>13 agreement? What were the circumstances.</p> <p>14 A. No, again, like I said I saw</p> <p>15 it for the first time in the men's room.</p> <p>16 Q. Where did you sign it?</p> <p>17 A. In the men's room.</p> <p>18 Q. How long did you review it in</p> <p>19 the men's room?</p> <p>20 A. Briefly, maybe about three or</p> <p>21 four minutes or five minutes tops.</p> <p>22 Q. Was Mr. Brown there with you?</p> <p>23 A. Yes.</p> <p>24 Q. Did he say anything to you?</p> <p>25 A. Pretty much, he just went over</p> <p style="text-align: right;">[Page 51]</p>	<p>1 J. Vaughn</p> <p>2 Q. Did you have any understanding</p> <p>3 of what the arbitration procedures were</p> <p>4 under the prevailing constitution of rules</p> <p>5 of the New York State Stock Exchange Inc</p> <p>6 or the National Association of Securities</p> <p>7 Dealers Inc.?</p> <p>8 A. No, not in totality.</p> <p>9 Q. Did you know whether they had</p> <p>10 any rules concerning class actions?</p> <p>11 A. No, I didn't.</p> <p>12 Q. Did you have the intent to</p> <p>13 waive a class action when you read it?</p> <p>14 A. No.</p> <p>15 Q. Did you discuss that clause</p> <p>16 with Mr. Brown?</p> <p>17 A. No, not at all.</p> <p>18 Q. At the time you signed this</p> <p>19 agreement, did you believe that you were</p> <p>20 waiving your rights to bring a class</p> <p>21 action based upon this agreement?</p> <p>22 A. No, and I didn't give it any</p> <p>23 thought either.</p> <p>24 MR. BORTNICK: I have nothing</p> <p>25 further.</p> <p style="text-align: right;">[Page 53]</p>

[14] (Pages 50 to 53)

1 J. Vaughn	1 J. Vaughn
2 THE CHAIRMAN: Thank you,	2 A. Yes.
3 you may proceed.	3 Q. How many mediators?
4 MR. BORTNICK: Thank you, Mr.	4 A. I don't remember.
5 Chairman.	5 Q. You don't remember the names?
6 EXAMINATION BY	6 A. No.
7 MR. HARPER:	7 Q. Let me show you what your
8 Q. Good morning, Mr. Vaughn.	8 lawyer marked as Panel Exhibit 1 just a
9 A. Good morning.	9 moment ago, and if I could direct your
10 Q. My name is Gerard Harper, I	10 attention to paragraph 14.
11 represent Prudential.	11 A. Yes.
12 A. Yes.	12 Q. Panel Exhibit 1 --
13 Q. I take it you have testified	13 THE CHAIRMAN: Isn't that the
14 before at least once?	14 amended complaint?
15 A. Yes.	15 MR. HARPER: Yes.
16 Q. And that was in the	16 MR. BORTNICK: It is part of
17 arbitration against Mr. Carranate?	17 Arbitrator Exhibit 1, it is not
18 A. Yes.	18 Panel Exhibit 1.
19 Q. And any other time?	19 MR. HARPER: I'm sorry.
20 A. No, other than the mediation	20 Q. Could you turn to paragraph 14
21 that we went through with Prudential.	21 of part of Arbitrator Exhibit 1 --
22 Q. When you say you testified at	22 A. Yes.
23 a mediation were you sworn in?	23 Q. -- and read that paragraph 14,
24 A. If I remember correctly, yes.	24 page 4?
25 Q. And who was the mediator?	25 A. Yes.
[Page 54]	[Page 56]
1 J. Vaughn	1 J. Vaughn
2 A. I can't tell you that, I don't	2 Q. Can you read that out loud?
3 remember.	3 A. "Upon information and belief,
4 Q. Where was it held?	4 Leeds Morelli & Brown and the lawyer
5 A. It was held in, I want to	5 defendant's without plaintiff's knowledge
6 believe it was the NASDAQ building over	6 agreed to cap various claims under their
7 here by across the street from I don't	7 agreement with PSI and refused to press
8 know the exact address but it's across the	8 plaintiff's claims until they received
9 street from New York Plaza.	9 payment from PSI which payments were
10 Q. And who was present?	10 concealed from plaintiff and plaintiff's
11 A. I mean who was present, it	11 class."
12 would have been Leeds, Morelli myself and	12 Q. What is your information and
13 the panel.	13 belief to that?
14 Q. Was Mr. Leeds and Mr. Morelli	14 A. I have no idea.
15 there?	15 Q. Now, you left Prudential in
16 A. If I remember correctly, yes,	16 1998?
17 they all were there.	17 A. That's correct.
18 Q. When you say all, you mean	18 Q. And why don't you take a look
19 Leeds?	19 at your settlement agreement which is
20 A. Morelli and Brown was there.	20 Exhibit 3?
21 Q. And you were there?	21 A. Yes.
22 A. Yes.	22 Q. And that is your signature on
23 Q. Was your wife there?	23 page 4?
24 A. No, my wife wasn't there.	24 A. Yes.
25 Q. And the mediator was there?	25 Q. Who wrote the date in there,
[Page 55]	[Page 57]

[15] (Pages 54 to 57)

<p>1 J. Vaughn</p> <p>2 is that your handwriting?</p> <p>3 A. I don't know.</p> <p>4 Q. Do you recognize that?</p> <p>5 A. No.</p> <p>6 Q. Do you remember whether that</p> <p>7 was the date of the McCall fundraiser?</p> <p>8 A. Possibly because I believe I</p> <p>9 left in the early part of November, so</p> <p>10 that it could possibly be the date.</p> <p>11 Q. Well, let's turn to page 1 of</p> <p>12 Exhibit 3.</p> <p>13 A. Yes.</p> <p>14 Q. Could you read paragraph 1,</p> <p>15 the first page?</p> <p>16 A. Yes. "Separation from</p> <p>17 employment, Vaughn's last date of</p> <p>18 employment at PSI shall be October 23,</p> <p>19 1998."</p> <p>20 Q. Does that refresh your</p> <p>21 recollection that you signed this</p> <p>22 agreement after your last day of</p> <p>23 employment at PSI?</p> <p>24 A. No.</p> <p>25 Q. Is that statement false?</p> <p style="text-align: right;">[Page 58]</p>	<p>1 J. Vaughn</p> <p>2 was still an employee of Prudential as far</p> <p>3 as I remember as of October 23.</p> <p>4 Q. So you could have been orally</p> <p>5 notified that your claim had been resolved</p> <p>6 and understood that your last day was to</p> <p>7 be October 23, 1998 and then signed the</p> <p>8 paperwork four days later?</p> <p>9 A. I can't say, I don't remember.</p> <p>10 Q. You have no reason to doubt as</p> <p>11 you sit here today that the statements in</p> <p>12 the document itself are accurate?</p> <p>13 A. No, I don't have a reason to</p> <p>14 doubt it.</p> <p>15 Q. Thank you.</p> <p>16 Now, you mentioned that you</p> <p>17 retained Leeds & Morelli and your best</p> <p>18 estimate was January of 1998; do you</p> <p>19 recall that?</p> <p>20 A. Yes.</p> <p>21 Q. Did you sign an agreement with</p> <p>22 Leeds & Morelli?</p> <p>23 A. Leeds & Morelli and myself we</p> <p>24 talked in the latter part of the year</p> <p>25 before I signed that retainer. So did I</p> <p style="text-align: right;">[Page 60]</p>
<p>1 J. Vaughn</p> <p>2 A. I don't recall. I don't</p> <p>3 recall.</p> <p>4 Q. But you have no reason to</p> <p>5 doubt, as you sit here today, that you</p> <p>6 executed the document on or about October</p> <p>7 27, 1998 and that your last date of</p> <p>8 employment was four days before?</p> <p>9 A. No, I don't necessarily agree</p> <p>10 with that.</p> <p>11 Q. If you don't agree with that,</p> <p>12 then tell me what is in your mind that</p> <p>13 makes you doubt the authenticity and</p> <p>14 accuracy of the document?</p> <p>15 A. Because when I left Prudential</p> <p>16 before I had anything in writing stating</p> <p>17 what my last day was, I got a call from</p> <p>18 Leeds Morelli & Brown at the job 4 o'clock</p> <p>19 in the afternoon -- and I remember this</p> <p>20 clearly -- they said if you choose to, you</p> <p>21 do not have to go back to Prudential</p> <p>22 anymore we have X, Y and Z for you, that's</p> <p>23 it. You let us know what you want to do.</p> <p>24 And that's what I remember.</p> <p>25 It could have been that day, but clearly I</p> <p style="text-align: right;">[Page 59]</p>	<p>1 J. Vaughn</p> <p>2 sign a retainer when I first was</p> <p>3 introduced to them, no, this took about a</p> <p>4 month or so before I did.</p> <p>5 MR. BORTNICK: Would you</p> <p>6 read back the question, please.</p> <p>7 (A portion of the record was</p> <p>8 read.)</p> <p>9 Q. Yes?</p> <p>10 A. Yes.</p> <p>11 Q. Let me show you a document</p> <p>12 that will be marked as whatever you want</p> <p>13 to mark it as?</p> <p>14 MR. BORTNICK: Respondents'</p> <p>15 Exhibit 1.</p> <p>16 MR. HARPER: That's fine.</p> <p>17 (Respondents' Exhibit 1,</p> <p>18 agreement marked for identification,</p> <p>19 as of this date.)</p> <p>20 Q. You weren't fired by</p> <p>21 Prudential, correct?</p> <p>22 A. No.</p> <p>23 Q. I'm incorrect?</p> <p>24 A. No, I wasn't fired by</p> <p>25 Prudential.</p> <p style="text-align: right;">[Page 61]</p>

[16] (Pages 58 to 61)

<p>1 J. Vaughn</p> <p>2 Q. You left voluntarily?</p> <p>3 A. Yes.</p> <p>4 Q. And now, when you initially</p> <p>5 retained Leeds Morelli, it was for the</p> <p>6 purpose of negotiating a settlement with</p> <p>7 PSI; isn't that right?</p> <p>8 A. No, that is not right.</p> <p>9 Q. When you signed the retainer</p> <p>10 agreement with Leeds Morelli, you did so</p> <p>11 to retain them to negotiate settlement</p> <p>12 with PSI, correct?</p> <p>13 A. No.</p> <p>14 Q. Look at the first paragraph of</p> <p>15 paragraph 1.</p> <p>16 A. Yes.</p> <p>17 Q. And let me rephrase the</p> <p>18 question for you.</p> <p>19 A. Yes.</p> <p>20 Q. You say you met with Leeds</p> <p>21 Morelli sometime in November --</p> <p>22 A. Yes.</p> <p>23 Q. -- of what I guess was '97.</p> <p>24 A. Yes.</p> <p>25 Q. Did you call them or did they</p> <p style="text-align: right;">[Page 62]</p>	<p>1 J. Vaughn</p> <p>2 Q. And then you subsequently</p> <p>3 executed a retainer agreement with Leeds</p> <p>4 Morelli, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And in that retainer agreement</p> <p>7 the first thing that Leeds Morelli</p> <p>8 promised to do was to negotiate a</p> <p>9 settlement with PSI on your behalf,</p> <p>10 correct?</p> <p>11 A. I don't know that.</p> <p>12 Q. Read paragraph 1 of the</p> <p>13 retainer agreement.</p> <p>14 A. "The retainer will only</p> <p>15 include the contacting of employee to seek</p> <p>16 a negotiated settlement."</p> <p>17 Q. Stop for a minute. Is there</p> <p>18 any word in that sentence you don't</p> <p>19 understand?</p> <p>20 A. No.</p> <p>21 Q. And so the retainer agreement</p> <p>22 in the first instance was only to contact</p> <p>23 PSI to seek a negotiated settlement,</p> <p>24 correct?</p> <p>25 A. According to the retainer,</p> <p style="text-align: right;">[Page 64]</p>
<p>1 J. Vaughn</p> <p>2 call you?</p> <p>3 A. I didn't call them. I was</p> <p>4 referred to them by another colleague who</p> <p>5 had already retained them.</p> <p>6 Q. Who?</p> <p>7 A. Connie Hernandez.</p> <p>8 Q. And what did Ms. Hernandez say</p> <p>9 to you and what did you say to her?</p> <p>10 A. Connie expressed to me that</p> <p>11 she knew I was looking for a lawyer as</p> <p>12 well because of the issues that were going</p> <p>13 on at Prudential, and I wanted to do</p> <p>14 something about it.</p> <p>15 So Connie told me she already</p> <p>16 had a lawyer that she had signed a</p> <p>17 retainer for, she said they were good and</p> <p>18 that maybe it would be better that I join</p> <p>19 them rather than have an individual,</p> <p>20 another lawyer, and not have the esteem it</p> <p>21 would be if you had more than one person</p> <p>22 being retained by a particular firm.</p> <p>23 Q. And that happened in around</p> <p>24 November of?</p> <p>25 A. November, December of '97.</p> <p style="text-align: right;">[Page 63]</p>	<p>1 J. Vaughn</p> <p>2 yes.</p> <p>3 Q. And then if you would read the</p> <p>4 second sentence, please.</p> <p>5 A. "If legal action is required</p> <p>6 then the parties will discuss a different</p> <p>7 financial situation."</p> <p>8 Q. So the first task that you</p> <p>9 gave Leeds Morelli was to go seek a</p> <p>10 settlement of your claims?</p> <p>11 A. In correct.</p> <p>12 Q. Well --</p> <p>13 A. Whatever this says here is one</p> <p>14 thing, I'm telling you that is incorrect.</p> <p>15 Q. So this contract means nothing</p> <p>16 too?</p> <p>17 A. I didn't say it doesn't mean</p> <p>18 anything. You are asking me, and I'm</p> <p>19 being totally honest with you, no, that is</p> <p>20 not the case.</p> <p>21 Q. You didn't understand it when</p> <p>22 you read it?</p> <p>23 A. You got to -- okay.</p> <p>24 Q. Did you understand?</p> <p>25 A. Yes, I understood.</p> <p style="text-align: right;">[Page 65]</p>

[17] (Pages 62 to 65)

1 J. Vaughn
2 Q. Did you read it?
3 A. Yes.
4 Q. Did you read it in the men's
5 room or somewhere else?
6 A. I don't remember where I read
7 it.
8 Q. Did you read it in their
9 office?
10 A. I don't remember.
11 Q. Have you ever been to their
12 office?
13 A. Yes.
14 Q. How many times?
15 A. I don't recall.
16 Q. And you read this before you
17 signed it?
18 A. Yes.
19 Q. And you understood it?
20 A. I understood the agreement
21 that I had with Leeds & Morelli, again.
22 Q. Now, let's go back to
23 paragraph 6 --
24 A. Yes.
25 Q. -- read that out loud.

[Page 66]

1 J. Vaughn
2 A. "There are no other agreements
3 between the parties other than those
4 contained here in this agreement
5 represents the entire understanding of the
6 parties."
7 Q. Is there any word or phrase in
8 that sentence or paragraph that you do not
9 understand?
10 A. I understand it clearly.
11 Q. You understand it clearly?
12 A. Yes.
13 Q. So whatever agreement you had
14 with Leeds & Morelli as of January 5, 1998
15 was in these two pages, right?
16 A. According to this, yes.
17 Q. According to this?
18 A. Yes.
19 Q. And so there was no other
20 contract between you?
21 A. Again, do you want to talk
22 about what is on paper or do you want to
23 talk about what we agreed upon?
24 Q. You see I can only talk about
25 what is on paper. Let's read the next

[Page 67]

1 J. Vaughn
2 sentence.
3 A. "All parties have read this,
4 understood each and every term herein, and
5 the signature below constitutes an
6 acknowledgement of such an understanding."
7 Q. Now do you understand all the
8 words there?
9 A. Clearly.
10 Q. Was that true when you signed
11 it, when you promised and acknowledged
12 that all, that you read it understood it;
13 was it true at the time?
14 A. No.
15 Q. It was false?
16 A. Yes.
17 Q. So you lied when you signed
18 your name to this contract?
19 A. I didn't lie no more than the
20 person who signed above my name.
21 Q. Was paragraph 7 true or false
22 when you signed it?
23 A. I believe I just answered that
24 question.
25 Q. Tell it to me again.

[Page 68]

1 J. Vaughn
2 A. No. When you asked him to
3 repeat the question, could you repeat the
4 answer --
5 THE CHAIRMAN: Mr. Vaughn,
6 answer the question, please.
7 A. The answer is yes again.
8 Q. It is false?
9 A. Yes.
10 Q. And number 6 is false too?
11 A. That is correct.
12 Q. And number 1 is false too?
13 A. That's correct.
14 Q. Is there anything in
15 Respondents' Exhibit 1 that is true?
16 A. Yes, I retained them.
17 Q. That's it?
18 A. That's it.
19 Q. And you read an understood the
20 agreement, but it was a false agreement
21 you knew it to be false at the time you
22 signed it?
23 A. Again, I understood the
24 agreement. I understood what's in the
25 agreement. Again, Leeds & Morelli as well

[Page 69]

[18] (Pages 66 to 69)

<p>1 J. Vaughn</p> <p>2 as myself and everybody else who was</p> <p>3 involved in this were under different</p> <p>4 perceptions or different interpretations</p> <p>5 of what was going to happen with this</p> <p>6 particular situation.</p> <p>7 Now, what's on paper is one</p> <p>8 thing. That is the only thing right now</p> <p>9 we can sit here and say we know to be true</p> <p>10 that's what was put on paper. However,</p> <p>11 there were other things that went on that</p> <p>12 were discussed and totally a lot of this</p> <p>13 stuff is maybe past the limitations of</p> <p>14 even going into any further, but the fact</p> <p>15 of the matter is I'm telling you as well</p> <p>16 as everybody else in here that this may be</p> <p>17 a statement in truth, but it's not a true</p> <p>18 statement.</p> <p>19 Q. All I wanted from you was did</p> <p>20 you sign the document that you knew was</p> <p>21 false at the time?</p> <p>22 A. I answered that.</p> <p>23 Q. And you did that's what you</p> <p>24 did, right?</p> <p>25 A. Yes.</p> <p style="text-align: right;">[Page 70]</p>	<p>1 J. Vaughn</p> <p>2 more, but we don't have that in our</p> <p>3 paperwork here today but, yes, it was</p> <p>4 more.</p> <p>5 Q. It was more?</p> <p>6 A. Yes.</p> <p>7 Q. Let me take a look then. Let</p> <p>8 me mark as Respondents' Exhibit 2, a</p> <p>9 five-page document.</p> <p>10 (Respondents' Exhibit 2 a</p> <p>11 five-page document marked for</p> <p>12 identification, as of this date.)</p> <p>13 Q. Can you identify Respondents'</p> <p>14 Exhibit 2 for me, Mr. Vaughn?</p> <p>15 A. Yes.</p> <p>16 Q. What is it?</p> <p>17 A. This is a document stating</p> <p>18 what we were looking for in damages and</p> <p>19 basically my complaint to Prudential.</p> <p>20 Q. And do you see on page 3 where</p> <p>21 it says back pay damage estimated</p> <p>22 \$200,000?</p> <p>23 A. Yes.</p> <p>24 Q. Were they your estimated</p> <p>25 damages at the time?</p> <p style="text-align: right;">[Page 72]</p>
<p>1 J. Vaughn</p> <p>2 Q. Now, and you don't remember</p> <p>3 where you were when you signed this</p> <p>4 document?</p> <p>5 A. No.</p> <p>6 Q. Do you know who was present?</p> <p>7 A. No.</p> <p>8 Q. Now, no one from PSI was</p> <p>9 present when you signed this document?</p> <p>10 A. Absolutely not.</p> <p>11 Q. And PSI had absolutely nothing</p> <p>12 to do with your selection of counsel?</p> <p>13 A. No, they didn't have anything</p> <p>14 to do with it.</p> <p>15 Q. That was somebody you chose on</p> <p>16 your own?</p> <p>17 A. Yes.</p> <p>18 Q. Based on recommendation from</p> <p>19 Ms. Hernandez?</p> <p>20 A. That's correct.</p> <p>21 Q. You gave to Leeds & Morelli a</p> <p>22 calculation of your injuries and damages</p> <p>23 which you computered to equal \$200,000,</p> <p>24 correct?</p> <p>25 A. Actually it was computed to be</p> <p style="text-align: right;">[Page 71]</p>	<p>1 J. Vaughn</p> <p>2 A. These were estimated based on</p> <p>3 conversations that I had specifically</p> <p>4 with -- in the counsel at the time, but</p> <p>5 your answer is yes.</p> <p>6 Q. Did anybody ever tell you that</p> <p>7 your lawyer stood up in front of Judge</p> <p>8 Coate and said you had no damages on your</p> <p>9 underlying claims as opposed to your</p> <p>10 theory of the class action?</p> <p>11 A. No.</p> <p>12 Q. Nobody told you that?</p> <p>13 A. No.</p> <p>14 Q. So the first time you read the</p> <p>15 transcript of February 5, 2006 when Mr.</p> <p>16 Bortnick asked you to read it out loud, is</p> <p>17 the first time you saw that today?</p> <p>18 A. Yes.</p> <p>19 Q. So he hadn't shown you that</p> <p>20 before?</p> <p>21 A. I have seen it.</p> <p>22 Q. Turn to -- you have seen it?</p> <p>23 A. Yes.</p> <p>24 Q. Have you read it?</p> <p>25 A. Yes, I read it. You asked me</p> <p style="text-align: right;">[Page 73]</p>

[19] (Pages 70 to 73)

<p>1 J. Vaughn</p> <p>2 is this the first time I have seen it, I</p> <p>3 said, no, I have seen it.</p> <p>4 Q. When did you see it?</p> <p>5 A. Whenever they mailed me a copy</p> <p>6 of everything that we have gone through</p> <p>7 thus far.</p> <p>8 Q. Okay. So turn to page 7 –</p> <p>9 A. Yes.</p> <p>10 Q. – and if you will refer to</p> <p>11 line 11?</p> <p>12 A. Yes.</p> <p>13 Q. Could you read the sentence to</p> <p>14 the rest of paragraph beginning with "Mr.</p> <p>15 Vaughn"?</p> <p>16 A. "Mr. Vaughn, when he settled</p> <p>17 his original case with Prudential with</p> <p>18 Leeds & Morelli representing him, a piece</p> <p>19 of paper that said: I think these are my</p> <p>20 damages is a certain amount, and</p> <p>21 Prudential agreed to pay that certain</p> <p>22 amount to Mr. Vaughn less, of course, the</p> <p>23 contingency portion that went to Leeds</p> <p>24 Morelli & Brown."</p> <p>25 Q. And if you go to page 9, line [Page 74]</p>	<p>1 J. Vaughn</p> <p>2 mediation. I do recall showing up at</p> <p>3 mediation and based on what I had to say</p> <p>4 they were going to assess what amount</p> <p>5 would be what they would consider a</p> <p>6 settlement.</p> <p>7 Q. And that amount just happened</p> <p>8 to coincide with your estimate of what</p> <p>9 your actual damages were?</p> <p>10 A. Yes.</p> <p>11 Q. And you got the \$200,000,</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. And you got the Cobra payments</p> <p>15 on your behalf for six months, right?</p> <p>16 A. I don't recall.</p> <p>17 Q. You don't remember –</p> <p>18 A. I don't recall.</p> <p>19 Q. -- whether you got that</p> <p>20 benefit out of the contract?</p> <p>21 A. I don't recall.</p> <p>22 Q. But you got those things</p> <p>23 without having to go to court, right?</p> <p>24 A. Yes.</p> <p>25 Q. So you got what you asked for [Page 76]</p>
<p>1 J. Vaughn</p> <p>2 3, after the words "Mr. Bortnick." Could</p> <p>3 you read the first paragraph there?</p> <p>4 A. "The court" --</p> <p>5 Q. No, after the words "Mr.</p> <p>6 Bortnick."</p> <p>7 A. "Mr. Vaughn did not have any</p> <p>8 intention to bring a one-on-one</p> <p>9 arbitration because he has a damages issue</p> <p>10 here and he understands that."</p> <p>11 Q. Do you know what Mr. Bortnick</p> <p>12 was talking about?</p> <p>13 A. I have to read the rest of</p> <p>14 this to understand that but, no, to answer</p> <p>15 the question, just reading that one</p> <p>16 sentence, no.</p> <p>17 Q. The fact is you submitted a</p> <p>18 claim in mediation for \$200,000; that's</p> <p>19 the claim you submitted in mediation,</p> <p>20 right?</p> <p>21 A. No.</p> <p>22 Q. You submitted a larger claim</p> <p>23 in mediation?</p> <p>24 A. We went to mediation I don't</p> <p>25 recall ever submitting any numbers to [Page 75]</p>	<p>1 J. Vaughn</p> <p>2 without having to go to court and without</p> <p>3 having a hearing like this, nobody was</p> <p>4 cross examining you, were they?</p> <p>5 A. No.</p> <p>6 Q. And there were no judges</p> <p>7 there?</p> <p>8 A. No.</p> <p>9 Q. No juries there?</p> <p>10 A. Not that I recall.</p> <p>11 Q. And you got 100 percent of</p> <p>12 what you asked for?</p> <p>13 A. Yes.</p> <p>14 Q. And you were asserting an</p> <p>15 individual claim, a claim unique to you,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. Not on behalf of a class, if</p> <p>19 you will, right?</p> <p>20 A. That's correct.</p> <p>21 Q. What is a class action?</p> <p>22 A. A class action is a group of</p> <p>23 people coming together for one specific</p> <p>24 issue for a common cause that would be a</p> <p>25 class action in my view. [Page 77]</p>

[20] (Pages 74 to 77)

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<p>1 J. Vaughn</p> <p>2 Q. Did you know what a class</p> <p>3 action was back in 1998?</p> <p>4 A. Again, that's probably I would</p> <p>5 have thought the same thing.</p> <p>6 Q. Now, are you being paid to be</p> <p>7 a plaintiff in this action?</p> <p>8 A. No, I'm not.</p> <p>9 Q. When is the first time the</p> <p>10 thought occurred to you to file a class</p> <p>11 action against my client and others?</p> <p>12 A. When I realized that from what</p> <p>13 I believed is that the actual agreement</p> <p>14 that I signed was when I found out they</p> <p>15 had a relationship with Prudential for</p> <p>16 whatever reasons, and that wasn't made</p> <p>17 known to me under confidentiality I would</p> <p>18 think of your client, then I thought at</p> <p>19 that point, hey, Prudential paying you and</p> <p>20 you are taking money from me. I think</p> <p>21 that there's something wrong with this,</p> <p>22 and that's when I decided to pursue it.</p> <p>23 Q. I asked you one question and I</p> <p>24 said "when" not what, "when"?</p> <p>25 A. I don't remember.</p> <p style="text-align: right;">[Page 78]</p>	<p>1 J. Vaughn</p> <p>2 A. Yes.</p> <p>3 Q. That is when the thought first</p> <p>4 occurred to you?</p> <p>5 A. Yes.</p> <p>6 Q. And yet you filed a class</p> <p>7 action in October of 2004?</p> <p>8 A. Okay. Well, I could be off</p> <p>9 but it had to be after 2004 or about</p> <p>10 around 2004.</p> <p>11 Q. So it wasn't after 2004 it was</p> <p>12 in 2004?</p> <p>13 A. Okay.</p> <p>14 Q. How long before you filed a</p> <p>15 class action?</p> <p>16 A. I don't remember. I don't</p> <p>17 remember.</p> <p>18 Q. Now, whose idea was it to file</p> <p>19 a class action?</p> <p>20 A. Whose idea?</p> <p>21 MR. BORTNICK: I will object</p> <p>22 to the extent that if Mr. Vaughn had</p> <p>23 an attorney at the time that he</p> <p>24 should not reveal the substance of</p> <p>25 the attorney-client communications.</p> <p style="text-align: right;">[Page 80]</p>
<p>1 J. Vaughn</p> <p>2 Q. Was it --</p> <p>3 MR. BORTNICK: I will object</p> <p>4 in terms of the tone here from Mr.</p> <p>5 Harper. If he can ask the same</p> <p>6 question without the tone.</p> <p>7 THE CHAIRMAN: It is cross.</p> <p>8 Q. All I asked you is when?</p> <p>9 A. I don't remember.</p> <p>10 Q. You don't remember?</p> <p>11 A. No.</p> <p>12 Q. Was it in 1999?</p> <p>13 A. I don't remember.</p> <p>14 Q. So it could have been 1999?</p> <p>15 A. No, I don't remember. I don't</p> <p>16 recall.</p> <p>17 Q. You don't recall?</p> <p>18 A. No.</p> <p>19 Q. Do you recall how long it was</p> <p>20 before you commenced the class action?</p> <p>21 A. It would have had to have been</p> <p>22 after 2004.</p> <p>23 Q. After 2004?</p> <p>24 A. Yes.</p> <p>25 Q. So 2005?</p> <p style="text-align: right;">[Page 79]</p>	<p>1 J. Vaughn</p> <p>2 THE CHAIRMAN: Fine.</p> <p>3 MR. BORTNICK: I wasn't Mr.</p> <p>4 Vaughn's counsel at the time. But</p> <p>5 if he had other counsel.</p> <p>6 Q. Whose idea was it?</p> <p>7 A. Again, when this was brought</p> <p>8 to my attention?</p> <p>9 Q. By whom?</p> <p>10 A. By Connie Hernandez.</p> <p>11 Q. Connie Hernandez brought it to</p> <p>12 your attention?</p> <p>13 A. Yes. Then I decided to go</p> <p>14 forward with it. When that time was I</p> <p>15 don't recall. It had to be somewhere</p> <p>16 around 2004, and my reason for saying that</p> <p>17 is because prior to that I spent from 2000</p> <p>18 to 2003 working in Atlanta for Citigroup.</p> <p>19 So when I got back up here is when this</p> <p>20 all surfaced.</p> <p>21 A. Who do you work for now?</p> <p>22 A. I work for Bloomberg.</p> <p>23 Q. What did Mr. Hernandez say to</p> <p>24 you and you say to her?</p> <p>25 A. I don't remember the exact</p> <p style="text-align: right;">[Page 81]</p>

[21] (Pages 78 to 81)

1 J. Vaughn	1 J. Vaughn
2 conversation.	2 friends you mentioned it to?
3 Q. Did she mention a lawyer's	3 A. No.
4 name?	4 Q. How about Ms. Hernandez?
5 A. She mentioned Angela Roper,	5 A. Ms. Hernandez is a very good
6 yes.	6 friend.
7 Q. And did you call Angela Roper	7 Q. You mentioned to her you were
8 or did she call you?	8 unhappy that you got 100 percent of what
9 A. I called her.	9 you asked for in the PSI settlement?
10 Q. And had Ms. Hernandez retained	10 A. Again, some of the things that
11 Ms. Roper?	11 we are talking about here are not stated
12 A. I don't know.	12 in this because these were things that,
13 Q. And you have no recollection	13 number one, were either too old to talk
14 whatsoever what Ms. Hernandez said to you	14 about or they are not on paper.
15 in prompting you to make a call to Ms.	15 The things that I was unhappy
16 Roper?	16 with, if I must go into detail about them,
17 A. No?	17 was Leeds & Morelli told me that, hey, you
18 Q. Who is Ms. Roper?	18 would be getting when you --
19 A. My other attorney.	19 MR. HARPER: I have to
20 Q. Mr. Thyne's partner?	20 interrupt the witness, this is
21 A. Yes.	21 cross-examination.
22 Q. Now, let's go to the	22 MR. BORTNICK: The question
23 settlement agreement?	23 was, what were different --
24 A. Yes.	24 THE CHAIRMAN: Hold on, one
25 Q. Between the time Mr. Hernandez	25 at a time.
[Page 82]	[Page 84]
1 J. Vaughn	1 J. Vaughn
2 spoke to you in about 2004 and the --	2 MR. HARPER: If you read it
3 between the time you signed your	3 back the question is what did you
4 settlement agreement in October 1998 and	4 say to Ms. Hernandez.
5 when you spoke to Mr. Hernandez at some	5 THE CHAIRMAN: Read it back.
6 point, had you ever expressed unhappiness	6 (A portion of the record was
7 about your settlement agreement with	7 read.)
8 Prudential?	8 THE CHAIRMAN: Let me say on
9 A. Yeah.	9 thing. Mr. Vaughn, do not make any
10 Q. To whom?	10 assumptions that something is too
11 A. I mean it was just to family	11 old for us to hear. If counsel has
12 and friends for the most part, nobody	12 some objection based on time to what
13 legally.	13 you are going to say they will make
14 Q. Did you ever complain to Leeds	14 it, but don't make that assumption
15 & Morelli?	15 yourself. Don't screen yourself
16 A. No.	16 from saying something you think is
17 Q. Did you ever complain to PSI?	17 irrelevant. Okay.
18 A. No.	18 THE WITNESS: Fine.
19 Q. So other than family or	19 Q. Yes or no?
20 friends -- what members of your family?	20 A. It is not yes or no. I did
21 A. I don't remember it was just	21 not mention to her that I was content that
22 family, just friends.	22 I got 100 or upset I got 100 percent. It
23 Q. Your wife?	23 was not 100 percent. 100 percent would
24 A. It wasn't my wife at the time.	24 have been the job working for DOW, which
25 Q. Do you remember any of the	25 was Discrimination on Wall Street, which
[Page 83]	[Page 85]

[22] (Pages 82 to 85)

<p>1 J. Vaughn</p> <p>2 is a company that Leeds & Morelli as well</p> <p>3 as the people at Prudential had put</p> <p>4 together for this purpose.</p> <p>5 MS. LEWIS: Objection.</p> <p>6 A. On top of that, which I have</p> <p>7 documentation for and I don't have it with</p> <p>8 us, but they also said that, hey, Jeff,</p> <p>9 you are going to get out of this deal you</p> <p>10 will get \$200,000 you will have a job</p> <p>11 working with DOW and you will get</p> <p>12 long-term disability. And I was going to</p> <p>13 their counselors for the purpose of this</p> <p>14 disability which never took place -- which</p> <p>15 never took place as well as they took 1</p> <p>16 percent of what -- or something along</p> <p>17 those lines of the what I settled for for</p> <p>18 purposes of DOW.</p> <p>19 So in other words I was buying</p> <p>20 into the company so I would have a job and</p> <p>21 work for and none of that existed. Again,</p> <p>22 this is not on paper, this is something</p> <p>23 that we agreed upon and these are things</p> <p>24 that can be shown.</p> <p>25 MS. LEWIS: Can I note my</p> <p style="text-align: right;">[Page 86]</p>	<p>1 J. Vaughn</p> <p>2 quote what Mr. Vaughn's intentions</p> <p>3 were at the signing of the</p> <p>4 settlement agreement, that's the</p> <p>5 sole issue I agree with her and</p> <p>6 whether this DOW was right or wrong</p> <p>7 or whatever is not part of this</p> <p>8 hearing.</p> <p>9 MS. LEWIS: Respectfully,</p> <p>10 part of the problem here was this</p> <p>11 door was opened on direct when Mr.</p> <p>12 Bortnick went well beyond, this is</p> <p>13 the agreement did you sign it, did</p> <p>14 you mean to sign it. So he asked</p> <p>15 about his qualifications and</p> <p>16 experience and Mr. Harper</p> <p>17 understandably is trying to follow</p> <p>18 up on it, but at some point when we</p> <p>19 start getting to the full measure of</p> <p>20 the claims we have to object.</p> <p>21 MR. HARPER: I actually would</p> <p>22 only say that Mr. Vaughn can talk</p> <p>23 all he wants, but I think it all</p> <p>24 should be stricken. I think he is</p> <p>25 not answering the exact question</p> <p style="text-align: right;">[Page 88]</p>
<p>1 J. Vaughn</p> <p>2 objection for the record. We have</p> <p>3 been told time and again by every</p> <p>4 counsel here that we were not going</p> <p>5 into the merits of these claims, all</p> <p>6 of which Leeds & Morelli denies.</p> <p>7 And this testimony regarding DOW or</p> <p>8 promises by Leeds & Morelli is not</p> <p>9 only -- there's documents that exist</p> <p>10 that aren't here. I mean this has</p> <p>11 no relevancy. Even if it could be</p> <p>12 proved to what is being discussed</p> <p>13 here regarding the intentions of Mr.</p> <p>14 Vaughn regarding when he signed the</p> <p>15 agreement that said he will</p> <p>16 arbitrate the claim.</p> <p>17 MR. BORTNICK: I want to</p> <p>18 largely agree what we said, but what</p> <p>19 can be proved, certainly not today,</p> <p>20 but I certainly agree with what this</p> <p>21 hearing was about, it was elicited</p> <p>22 on cross-examination. So I didn't</p> <p>23 think it was my place to object, but</p> <p>24 I do agree this is about what, as</p> <p>25 she said, I think almost a direct</p> <p style="text-align: right;">[Page 87]</p>	<p>1 J. Vaughn</p> <p>2 that I ask and on cross-examination</p> <p>3 I would ask for instruction that he</p> <p>4 listen to the question I ask and</p> <p>5 answer only that question because if</p> <p>6 you look at the questions I'm asking</p> <p>7 as opposed to the answers I'm</p> <p>8 getting, they all go to whatever</p> <p>9 issue Mr. Bortnick and Ms. Lewis</p> <p>10 think are an issue here.</p> <p>11 THE CHAIRMAN: Ms. Lewis'</p> <p>12 objection is overruled. Mr. Vaughn</p> <p>13 is to answer the question. However,</p> <p>14 there's no reason why Mr. Vaughn has</p> <p>15 to accept your characterization of</p> <p>16 something that happened, if he</p> <p>17 disagrees with it, if there is an</p> <p>18 assumption built into your question</p> <p>19 and he does not accept that</p> <p>20 assumption, he can make that known.</p> <p>21 MR. HARPER: Fair point.</p> <p>22 Q. By the way, you just talked</p> <p>23 about all these promises that were made to</p> <p>24 you that aren't on paper, none of them</p> <p>25 were made by Prudential, correct?</p> <p style="text-align: right;">[Page 89]</p>

[23] (Pages 86 to 89)

1 J. Vaughn
2 A. Correct.
3 Q. Let's go to the settlement
4 agreement.
5 A. Yes.
6 Q. And start with paragraph 16
7 because I want to go over it with you
8 carefully.
9 A. Yes.
10 Q. Let's take it one sentence at
11 a time, Mr. Vaughn --
12 A. Yes.
13 Q. -- paragraph 16.
14 A. Yes.
15 Q. "Voluntary execution," let's
16 read the first sentence out loud.
17 A. "Vaughn acknowledges that he
18 has carefully read this agreement and
19 understands all of its terms including the
20 full and final release of claims set forth
21 above.
22 Q. Is there anything in that
23 sentence that you do not understand?
24 A. No.
25 Q. Is there anything in that

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1 J. Vaughn
2 sentence that you did not understand at
3 the time?
4 A. No.
5 Q. Is there anything in that
6 sentence that was false at the time you
7 signed the agreement?
8 A. No.
9 Q. Let's do the second sentence,
10 and this is a little longer one, so maybe
11 we will break it down by semicolons. But
12 let's read the first part of the sentence
13 up to the first semicolon.
14 A. "Vaughn further acknowledge
15 that he has voluntarily entered into this
16 agreement."
17 Q. Is there anything about that
18 phrase you do not understand?
19 A. No.
20 Q. And you understood it clearly
21 at the time you signed the agreement,
22 correct?
23 A. Yes.
24 Q. And that statement is true
25 when you went into the agreement; is that

[Page 91]

1 J. Vaughn
2 correct?
3 A. Yes.
4 Q. The next phrase.
5 A. "That he has not relied upon
6 any representation or statement written or
7 oral not set forth in this agreement."
8 Q. Is there anything about that
9 sentence that you do not understand?
10 A. Pretty much the whole thing.
11 Q. You don't understand any of
12 it?
13 A. No.
14 Q. And what word don't you
15 understand?
16 A. Anything that I just read in
17 that sentence there I do not understand.
18 Q. Do you understand what the
19 word "relied" means?
20 A. Yes.
21 Q. What does it mean?
22 A. Depended upon.
23 Q. Do you understand what the
24 word "representation of statement" means?
25 A. Yes.

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1 J. Vaughn
2 Q. What does it mean?
3 A. Representation of someone who
4 is being represented.
5 Q. A fact or statement?
6 A. Yes.
7 Q. "Written or oral," do you
8 understand those words?
9 A. Yes.
10 Q. And "not set forth in this
11 agreement"?
12 A. That I don't understand.
13 Q. So let's break it down that
14 you have not depended upon any statement
15 of the fact whether in writing or oral
16 that isn't in the agreement?
17 A. No.
18 Q. No, what does it mean?
19 A. Well, because you said it says
20 here: Any representation or statement
21 written or oral, what is meant by oral?
22 Q. You tell me. Do you
23 understand what the word "oral" means?
24 A. I know what the word "oral"
25 means as it pertains to this statement.

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[24] (Pages 90 to 93)

1 J. Vaughn
2 Q. What does the word "oral"
3 mean?
4 A. I'm asking you.
5 Q. One of the good things and bad
6 things about being a lawyer is that I get
7 to ask the questions. So what does the
8 word "oral" mean to you in everyday life?
9 A. Verbal.
10 Q. In other words not written
11 down but talked?
12 A. Yes.
13 Q. So we understand what the word
14 "oral" means?
15 A. Exactly.
16 Q. So now tell me what in this
17 sentence fragment you do not understand?
18 A. I don't understand again where
19 it says: That he has not -- that he has
20 not relied upon any representation or
21 statement written or oral not set forth in
22 this agreement.
23 There were things that were
24 said orally that are not in this
25 agreement.

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1 J. Vaughn
2 Q. On which you relied?
3 A. Yes.
4 Q. But you just told me that the
5 first sentence was true and that you
6 understood it to be true at the time,
7 which is that you understood all of its
8 terms?
9 A. I'm not going to say I
10 understood all of its terms.
11 Q. You are changing the testimony
12 you gave me five minutes ago?
13 A. I'm not changing my testimony,
14 I'm telling you I did not understand all
15 of the terms included in this. I'm not a
16 lawyer.
17 Q. But you said a few -- I
18 understand you are not a lawyer, but you
19 signed a contract.
20 A. I understand.
21 Q. And you are trying against
22 Prudential to get around the contract, and
23 I'm trying to focus on the promises you
24 made to my client when you signed the
25 contract. And you told me not five

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1 J. Vaughn
2 minutes ago that it was accurate and true,
3 that you had carefully read and understood
4 all the terms of the contract and now you
5 are telling me two fragments later that
6 you didn't understand what that fragment
7 meant.
8 A. I'm telling you two fragments
9 later that I did not understand all of the
10 terms. I understood what the contract
11 represented, I did not all of the terms in
12 the contract is what I'm saying.
13 Q. Read the next sentence
14 fragment.
15 A. "That the only consideration
16 for signing this agreement is as set forth
17 herein."
18 Q. Do you know what that means?
19 A. No.
20 Q. Do you know what
21 "consideration" is in a contract?
22 A. Yes, I know what consideration
23 is.
24 Q. What is it?
25 A. (No response.)

[Page 96]

1 J. Vaughn
2 Q. Let me help you. Is it fair
3 to say that your understanding of the word
4 "consideration" is the promises that
5 Vaughn makes to PSI and the promises that
6 PSI makes to Vaughn in a contract that is
7 consideration and exchange of
8 consideration?
9 A. I can see that, but that's not
10 what I would interpret it as.
11 Q. You tell me what you interpret
12 it as.
13 A. I don't understand this the
14 way it is being represented here.
15 Q. I thought you just told me you
16 knew what consideration is?
17 A. Again, you are going to ask me
18 about a word or are you going to ask me
19 about a message fragment.
20 Q. Consideration in the context
21 of this agreement; do you know what it
22 means?
23 A. No.
24 Q. So that's another sentence
25 that you acknowledge that you don't

[Page 97]

[25] (Pages 94 to 97)

<p>1 J. Vaughn</p> <p>2 understand the terms?</p> <p>3 A. Right.</p> <p>4 Q. Even though you told me you</p> <p>5 did understand all the terms?</p> <p>6 A. Again, I understand what or</p> <p>7 understood what the contract represented.</p> <p>8 I did not understand all of the terms in</p> <p>9 the contract.</p> <p>10 Q. What did this contract, this</p> <p>11 contract, the written contract, what did</p> <p>12 it represent?</p> <p>13 A. What it represented to me was</p> <p>14 that Prudential -- I have agreed to settle</p> <p>15 with Prudential on X amount of dollars,</p> <p>16 and that was it, that's what that means to</p> <p>17 me.</p> <p>18 Q. Did you give anything to</p> <p>19 Prudential for that \$200,000?</p> <p>20 A. What do you mean did I give</p> <p>21 anything to them.</p> <p>22 Q. Did you make any promises to</p> <p>23 Prudential?</p> <p>24 A. That the only thing that I</p> <p>25 promised was that it wouldn't be something</p> <p style="text-align: right;">[Page 98]</p>	<p>1 J. Vaughn</p> <p>2 made to PSI in this agreement? You gave</p> <p>3 PSI a release from all claims and causes</p> <p>4 of action; do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And yet having released all</p> <p>7 those claims you are bringing a new one?</p> <p>8 A. Yes.</p> <p>9 Q. And if you go down and it</p> <p>10 says: "That the release covers any claims</p> <p>11 that you ever had or may hereafter have,</p> <p>12 whether known or unknown" -- this is the</p> <p>13 last line -- "suspected or unsuspected up</p> <p>14 to and including the date of this</p> <p>15 agreement." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Is there anything in there you</p> <p>18 don't understand?</p> <p>19 A. I pretty much understand that.</p> <p>20 Q. And then on the top of page 2</p> <p>21 it says: Vaughn further agrees, promises</p> <p>22 and covenant, that to the maximum extent</p> <p>23 permitted by law neither he" that means</p> <p>24 you "for any person organization or other</p> <p>25 entity acting on his behalf, has or will</p> <p style="text-align: right;">[Page 100]</p>
<p>1 J. Vaughn</p> <p>2 that would go to the news.</p> <p>3 Q. That's it?</p> <p>4 A. That was it.</p> <p>5 Q. All right. Well, let's go</p> <p>6 back to the first page of the contract --</p> <p>7 A. Yes.</p> <p>8 Q. -- of the settlement</p> <p>9 agreement.</p> <p>10 A. Yes.</p> <p>11 Q. And in paragraph 4 it reads:</p> <p>12 "Vaughn hereby releases and</p> <p>13 discharges PSI, its parents, divisions,</p> <p>14 subsidiaries and affiliations and their</p> <p>15 current and former directors, officers,</p> <p>16 shareholders, agents and employees and</p> <p>17 each of their predecessors, successors and</p> <p>18 assigns, hereinafter the company, from any</p> <p>19 and all claims and causes of action except</p> <p>20 for the benefits specifically set forth in</p> <p>21 this agreement arising out of or relating</p> <p>22 to Vaughn's employment or separation from</p> <p>23 employment." Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Isn't that a promise that you</p> <p style="text-align: right;">[Page 99]</p>	<p>1 J. Vaughn</p> <p>2 file, charge, claim, sue or cause to be or</p> <p>3 permit to be filed, charge or claim any</p> <p>4 actions for damages or other relief -- "</p> <p>5 do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. -- "against the company" --</p> <p>8 A. Yes.</p> <p>9 Q. -- "involving any matter</p> <p>10 occurring in the past up to the date of</p> <p>11 this agreement." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Is there anything there you</p> <p>14 don't understand?</p> <p>15 A. I understand it.</p> <p>16 Q. You understand that was</p> <p>17 something else you gave to PSI, you</p> <p>18 promised not to sue PSI, right?</p> <p>19 A. Yes.</p> <p>20 Q. And you did sue PSI again?</p> <p>21 MR. BORTNICK: I will</p> <p>22 object. The basis of the lawsuit</p> <p>23 which is on a well-recognized</p> <p>24 exception to a release is not an</p> <p>25 issue here. The claim in that being</p> <p style="text-align: right;">[Page 101]</p>

[26] (Pages 98 to 101)

<p>1 J. Vaughn</p> <p>2 there is a collusion between his</p> <p>3 attorneys and Prudential, that would</p> <p>4 void a release if --</p> <p>5 THE CHAIRMAN: If proven true.</p> <p>6 MR. BORTNICK: That is not</p> <p>7 here for today, but he is asking him</p> <p>8 about these issues and trying to</p> <p>9 make it seem as if he can't even sue</p> <p>10 them in the first place which is not</p> <p>11 true.</p> <p>12 MR. HARPER: I don't</p> <p>13 understand the objection, so I will</p> <p>14 continue with my examination.</p> <p>15 THE CHAIRMAN: Fine.</p> <p>16 Q. Then down on paragraph 9 it</p> <p>17 says: "Non disparagement. Vaughn</p> <p>18 represents that he has not and agrees that</p> <p>19 he will not in any way disparage PSI." Do</p> <p>20 you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you understand it?</p> <p>23 A. Yes.</p> <p>24 Q. But in fact you have</p> <p>25 disparaged PSI, correct?</p> <p style="text-align: right;">[Page 102]</p>	<p>1 J. Vaughn</p> <p>2 A. Yes.</p> <p>3 Q. So you breached that too,</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. And then you also said or</p> <p>7 promised that any claim or controversy</p> <p>8 arising out of or related to this</p> <p>9 agreement or interpretation thereof will</p> <p>10 be settled by arbitration. That is in</p> <p>11 paragraph --</p> <p>12 MR. BORTNICK: I want to</p> <p>13 object.</p> <p>14 A. I think you need to say it,</p> <p>15 how it says --</p> <p>16 Q. Under the then prevailing</p> <p>17 constitution rules of the New York State</p> <p>18 Stock Exchange Inc. or the National</p> <p>19 Association of Securities Dealers Inc. Do</p> <p>20 you see that.</p> <p>21 A. Yes.</p> <p>22 Q. You made that promise too?</p> <p>23 A. Correct.</p> <p>24 Q. Now, you still have my</p> <p>25 \$200,000?</p> <p style="text-align: right;">[Page 104]</p>
<p>1 J. Vaughn</p> <p>2 A. I don't know, have I?</p> <p>3 Q. Well, you sued them, right?</p> <p>4 A. No.</p> <p>5 Q. You haven't sued us?</p> <p>6 A. No.</p> <p>7 Q. What are we doing here?</p> <p>8 A. Again, we are here to see if</p> <p>9 this is -- if I can -- if I had any</p> <p>10 knowledge that I could not bring a class</p> <p>11 action suit against Prudential and the</p> <p>12 answer to that is no.</p> <p>13 However, have I sued</p> <p>14 Prudential right now, this is we are here</p> <p>15 to see if that's possible. Do you</p> <p>16 understand what I'm saying?</p> <p>17 Q. I do. I hope you understand</p> <p>18 that I believe you made lots of promises</p> <p>19 to PSI that you've broken in this</p> <p>20 agreement including the one that says that</p> <p>21 you will not disclose directly or</p> <p>22 indirectly except to legal advisors if</p> <p>23 circumstances underlying this agreement</p> <p>24 which you publicly filed a lawsuit,</p> <p>25 correct?</p> <p style="text-align: right;">[Page 103]</p>	<p>1 J. Vaughn</p> <p>2 A. Are you trying to be funny?</p> <p>3 Q. No.</p> <p>4 A. What does that have to do with</p> <p>5 why we are here?</p> <p>6 Q. What it has to do with, I gave</p> <p>7 you \$200,000 or that is to say PSI did.</p> <p>8 THE CHAIRMAN: Ask a question</p> <p>9 only.</p> <p>10 Q. PSI gave you the \$200,000, is</p> <p>11 that correct?</p> <p>12 A. Correct.</p> <p>13 Q. You still have it?</p> <p>14 A. That's not here or there.</p> <p>15 Q. Yes or no?</p> <p>16 THE CHAIRMAN: Answer the</p> <p>17 question.</p> <p>18 MR. BORTNICK: I have an</p> <p>19 objection. We are not talking about</p> <p>20 this is not about a rescission</p> <p>21 proceeding. He is asking about</p> <p>22 rescission and about whether this</p> <p>23 agreement should be rescinded. We</p> <p>24 paid you \$200,000, you give it back</p> <p>25 to us.</p> <p style="text-align: right;">[Page 105]</p>

[27] (Pages 102 to 105)

<p>1 J. Vaughn 2 Recission has nothing to 3 what we are here for today. Of 4 course, Mr. Vaughn cashed the check 5 or part of the check he got. That 6 is not the issue. 7 THE CHAIRMAN: Do you want to 8 respond to the objection? 9 MR. HARPER: I'm asking him a 10 question and it goes to the heart. 11 THE CHAIRMAN: He objected to 12 it and he's given his reasons for 13 objecting. I want to know whether 14 you wanted to respond. 15 MR. HARPER: I'm not talking 16 about recission or anything else. 17 I'm here because this gentleman is 18 saying he didn't understand what he 19 was doing when he signed the 20 agreement. And you have heard the 21 testimony, and I'm going to leave it 22 for the most part as it is that he 23 understands one minute and doesn't 24 understand it the next. 25 THE CHAIRMAN: So you are [Page 106]</p>	<p>1 J. Vaughn 2 any and all costs incurred in connection 3 with any such recovery including 4 reasonable attorneys' fees. 5 Do you understand the meaning 6 of that phrase? 7 A. Yes. 8 Q. In paragraph 14 of the 9 settlement agreement where it says: "Any 10 claim or controversy arising out or 11 related to the agreement the interpretation 12 thereof," it doesn't say except class 13 actions, right? 14 A. No, it doesn't. 15 Q. You knew what a class action 16 was in October of 1998, correct? 17 A. Yeah. 18 MR. HARPER: I pass the 19 witness. 20 THE CHAIRMAN: Off the 21 record. 22 (Discussion off the record.) 23 THE CHAIRMAN: You may 24 proceed. 25 MS. LEWIS: Thank you. [Page 108]</p>
<p>1 J. Vaughn 2 saying this question is appropriate 3 because -- 4 MR. HARPER: This question is 5 appropriate because if he is going 6 to walk away from the promises he 7 made to me, I want the \$200,000 8 back. I'm wondering why if this 9 agreement is so meaningless to him 10 he hasn't given me the money back. 11 MR. BORTNICK: That's a 12 statement. I want my money back is 13 not the question. 14 MR. HARPER: The question is: 15 Q. Have you kept the money? 16 A. Yes. 17 THE CHAIRMAN: Objection is 18 overruled. 19 A. Yes. 20 Q. And finally let me go to 21 paragraph 15, and read: "Vaughn agrees in 22 the event of finding of a breach of the 23 agreement, he will forfeit to PSI all 24 amounts received pursuant to this 25 agreement, and he shall indemnify PSI for [Page 107]</p>	<p>1 J. Vaughn 2 EXAMINATION BY 3 MS. LEWIS: 4 Q. Mr. Vaughn, when you settled 5 your claim you were aware you were not 6 settling it in any court proceeding; isn't 7 that correct? 8 A. That's correct. 9 Q. And you were aware that by 10 settling it, you were agreeing to give up 11 the right to go to court regarding a 12 claim; isn't that correct? 13 A. Yes. 14 Q. And in fact when you went 15 through the mediation process before the 16 mediators where you argued in favor of 17 your claim, you knew that was in lieu of 18 going to court; didn't you? 19 A. Yes. 20 Q. There was never a point in 21 time when you went to the mediators and 22 you said, well, if I don't like what you 23 say then I can still file in federal 24 court; did you? 25 A. No, I didn't say that. [Page 109]</p>

[28] (Pages 106 to 109)

<p>1 J. Vaughn</p> <p>2 Q. And you knew that by going to</p> <p>3 the mediators to present your claim you</p> <p>4 weren't going to have a jury trial either;</p> <p>5 is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. And I would like to direct</p> <p>8 your attention back to the settlement</p> <p>9 agreement.</p> <p>10 A. Yes.</p> <p>11 Q. Did anyone other than you and</p> <p>12 a representative of the Prudential sign</p> <p>13 the agreement?</p> <p>14 A. No.</p> <p>15 Q. There were other people making</p> <p>16 claims against Prudential; is that</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. This only settled your claim?</p> <p>20 A. Yes, that's correct.</p> <p>21 Q. Did you have to get permission</p> <p>22 from any of the other claimants to settle</p> <p>23 your claim?</p> <p>24 A. No.</p> <p>25 Q. Did they have a vote because</p> <p style="text-align: right;">[Page 110]</p>	<p>1 J. Vaughn</p> <p>2 is that Mr. Vaughn independently</p> <p>3 went into a private agreement</p> <p>4 between Mr. Vaughn and Prudential</p> <p>5 and nobody else participated in it.</p> <p>6 And this is further evidence of the</p> <p>7 fact that the class action is an</p> <p>8 after-the-fact creation that has</p> <p>9 nothing to do with the private</p> <p>10 settlement agreement.</p> <p>11 MR. BORTNICK: If I had gone</p> <p>12 out and bought a share of World Com</p> <p>13 that was my private decision perhaps</p> <p>14 with my broker to buy a share of</p> <p>15 World Com. It is totally irrelevant</p> <p>16 as to whether I'm going to be either</p> <p>17 a class member or a class</p> <p>18 representative of a lawsuit against</p> <p>19 World Com or a class action against</p> <p>20 World Com which had been ongoing.</p> <p>21 I mean there is no relevance.</p> <p>22 It is like saying the sky is blue so</p> <p>23 you can't file a class action or you</p> <p>24 can file a class action. It is a</p> <p>25 disconnected idea.</p> <p style="text-align: right;">[Page 112]</p>
<p>1 J. Vaughn</p> <p>2 it was going to affect their claim one way</p> <p>3 or another as to whether or not you settle</p> <p>4 your claim?</p> <p>5 MR. BORTNICK: I will</p> <p>6 object. I don't see any relevancy</p> <p>7 even to what has been on direct or</p> <p>8 cross or what has been brought up.</p> <p>9 MS. LEWIS: This would be my</p> <p>10 cross. So I don't have to follow on</p> <p>11 his cross, but the claim is that Mr.</p> <p>12 Vaughn has the right to proceed in a</p> <p>13 class action and that he can</p> <p>14 eviscerate his individual process</p> <p>15 because he wants to go in a group</p> <p>16 and I think the group participation</p> <p>17 in his settlement and whether or not</p> <p>18 this is a one-on-one settlement or</p> <p>19 something that somebody else</p> <p>20 participated in because all of these</p> <p>21 claims about 50 other people in the</p> <p>22 works is very relevant.</p> <p>23 THE CHAIRMAN: And the</p> <p>24 relevance is?</p> <p>25 MS. LEWIS: And the relevance</p> <p style="text-align: right;">[Page 111]</p>	<p>1 J. Vaughn</p> <p>2 THE CHAIRMAN: The objection</p> <p>3 is overruled.</p> <p>4 MS. LEWIS: Read back</p> <p>5 question.</p> <p>6 (A portion of the record was</p> <p>7 read.)</p> <p>8 A. No.</p> <p>9 Q. Now in paragraph 14 it says,</p> <p>10 does it not: "Any claim or controversy</p> <p>11 arising out of or related to this</p> <p>12 agreement"? I want to stop there.</p> <p>13 A. Yes.</p> <p>14 Q. Do you understand the words</p> <p>15 "any claim or controversy"?</p> <p>16 A. Yes.</p> <p>17 Q. "Will be or the interpretation</p> <p>18 thereof will be settled by an</p> <p>19 arbitration."</p> <p>20 Do you understand what that</p> <p>21 means will be settled by arbitration?</p> <p>22 A. Yes.</p> <p>23 Q. And then it goes on to say:</p> <p>24 "Under the prevailing</p> <p>25 constitution rules of New York State Stock</p> <p style="text-align: right;">[Page 113]</p>

[29] (Pages 110 to 113)

<p>1 J. Vaughn</p> <p>2 Exchange or National Association of</p> <p>3 Security Dealers Inc." you understood</p> <p>4 those would be the rules you would be</p> <p>5 proceeding on for an arbitration; is that</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. Did you ask about what those</p> <p>9 rules were going to be?</p> <p>10 A. No.</p> <p>11 Q. Did you ask whether or not you</p> <p>12 would be be entitled to bring a class</p> <p>13 action?</p> <p>14 A. No.</p> <p>15 Q. Did it matter to you one way</p> <p>16 or the other in deciding to accept</p> <p>17 \$200,000 whether or not you would still be</p> <p>18 entitled to bring a class action?</p> <p>19 A. No.</p> <p>20 Q. Did you understand that there</p> <p>21 was any exception to the phrase, "any</p> <p>22 claim or controversy" that would be</p> <p>23 brought under the arbitration?</p> <p>24 A. No.</p> <p>25 Q. Did you ask if there was any</p> <p style="text-align: right;">[Page 114]</p>	<p>1 J. Vaughn</p> <p>2 A. It would have to be after</p> <p>3 Q. Was it before or after they</p> <p>4 paid you your Cobra?</p> <p>5 A. Again, Cobra is something</p> <p>6 nobody paid me any Cobra or anything like</p> <p>7 that. If it was in there it's in there.</p> <p>8 No one paid me Cobra or anything.</p> <p>9 Q. Nobody paid your Cobra?</p> <p>10 A. No.</p> <p>11 Q. Did you ever seek legal</p> <p>12 counsel asking someone to enforce the</p> <p>13 obligation in the settlement agreement</p> <p>14 regarding a payment of Cobra?</p> <p>15 A. No.</p> <p>16 Q. Is that something that you</p> <p>17 didn't pay attention to one way or the</p> <p>18 other?</p> <p>19 A. No.</p> <p>20 Q. In paragraph 16 --</p> <p>21 A. Yes.</p> <p>22 Q. -- towards the end of the</p> <p>23 paragraph it says: "Vaughn also</p> <p>24 acknowledges that he has been afforded at</p> <p>25 least 21 days to consider the release</p> <p style="text-align: right;">[Page 116]</p>
<p>1 J. Vaughn</p> <p>2 exception that you could still bring</p> <p>3 something in court?</p> <p>4 A. No.</p> <p>5 Q. When did you first decide that</p> <p>6 you wished to bring a class action?</p> <p>7 A. When I realized Prudential had</p> <p>8 a secret agreement with Leeds & Morelli --</p> <p>9 when I say secret because I knew nothing</p> <p>10 about it, and that they were being paid by</p> <p>11 Leeds & Morelli as well as by myself. So</p> <p>12 I looked at that as a reason.</p> <p>13 Q. When you say -- I asked you</p> <p>14 for when. So why are you telling me what</p> <p>15 was the basis that you think you have a</p> <p>16 claim. When did you determine that?</p> <p>17 MR. BORTNICK: I object to</p> <p>18 the question because the question</p> <p>19 was when, and his answer was when I</p> <p>20 realized.</p> <p>21 THE CHAIRMAN: That's fine.</p> <p>22 Q. What was the date?</p> <p>23 A. I don't recall.</p> <p>24 Q. Was it before or after you</p> <p>25 received full payment?</p> <p style="text-align: right;">[Page 115]</p>	<p>1 J. Vaughn</p> <p>2 provision contained herein." Was that</p> <p>3 true?</p> <p>4 A. I don't know, I guess, yeah.</p> <p>5 Q. You had 21 days to consider</p> <p>6 whether to release this claim in exchange</p> <p>7 for payment of \$200,000?</p> <p>8 A. Yes.</p> <p>9 Q. And you did that?</p> <p>10 A. Yes.</p> <p>11 Q. And after that 21 days you</p> <p>12 decided to go forward and release the</p> <p>13 claim against Prudential?</p> <p>14 A. This has been way beyond 21</p> <p>15 days, we are talking about years now.</p> <p>16 Q. It says in the contract --</p> <p>17 A. I understand that.</p> <p>18 Q. -- that you had 21 days to</p> <p>19 consider the release before you accepted</p> <p>20 it, and you took that time and decided you</p> <p>21 wanted to release this claim?</p> <p>22 A. Yes.</p> <p>23 Q. And in connection with that</p> <p>24 you had the terms of the settlement</p> <p>25 agreement?</p> <p style="text-align: right;">[Page 117]</p>

[30] (Pages 114 to 117)

1 J. Vaughn
2 A. Yes.
3 Q. And then it also says that you
4 have seven days after signing this
5 agreement to revoke it in writing.
6 A. Yes.
7 Q. Did you understand that at the
8 time?
9 A. Yes.
10 Q. And during that seven-day time
11 period, you had the settlement agreement
12 in your possession; isn't that correct?
13 A. Possibly.
14 Q. Did you ask anybody for it?
15 A. No.
16 Q. Did you review its terms in
17 those seven days?
18 A. Yes.
19 Q. And after reviewing and during
20 that seven-day period you did not revoke
21 this agreement?
22 A. No.
23 Q. Was there any questions that
24 you directed to anybody about the
25 agreement?

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1 J. Vaughn
2 A. Yeah.
3 Q. Who did you speak with?
4 A. Steve Morelli.
5 Q. When did you speak with Mr.
6 Morelli regarding the settlement
7 agreement?
8 A. The day I came into his office
9 and signed a release for the check.
10 Q. So you met with Mr. Morelli
11 and you signed the agreement in his
12 office?
13 A. Not the agreement I signed the
14 release for the check. I had to sign a
15 release for it. So I signed that in his
16 office, the agreement was signed in the
17 bathroom at Tavern on the Green.
18 Q. How much time elapsed between
19 the time you were in the bathroom and the
20 time you signed the release?
21 A. When you say the release, you
22 are talking about the agreement or are you
23 talking about the check?
24 Q. You just said you signed the
25 release. I'm asking you how much time

[Page 119]

1 J. Vaughn
2 elapsed between the time you signed
3 whatever you signed in the bathroom the
4 agreement and the release?
5 A. It had to be maybe a couple of
6 weeks, maybe two weeks or something like
7 that.
8 Q. During that two-week period
9 did you have any conversations with Mr.
10 Morelli?
11 A. When I went into his office
12 and signed the release for the check, yes.
13 Q. Other than that, did you have
14 any other conversations with Mr. Morelli
15 at any time regarding a settlement
16 agreement?
17 A. No.
18 Q. Did you discuss the terms of
19 the settlement agreement when you took the
20 check?
21 A. No.
22 Q. Did you ask him about the
23 arbitration provision?
24 A. No.
25 Q. Did you ask him about the

[Page 120]

1 J. Vaughn
2 class actions?
3 A. No.
4 Q. Did you ask him whether or not
5 I will be able to go to federal court
6 after this and sue Prudential again?
7 A. No, because I figured that he
8 is my attorney, he would tell me that.
9 Q. That you would be entitled --
10 A. What my rights are at that
11 point.
12 Q. Did Mr. Morelli tell you you
13 cannot go to federal court?
14 A. No.
15 Q. He never told you that?
16 A. Never.
17 Q. You read the agreement and it
18 said that you were releasing all claims?
19 A. Yes.
20 Q. Did you ask him: What is this
21 I'm releasing all my claims?
22 A. No, I had no reason to ask him
23 that
24 Q. Because you understood that?
25 A. Yes.

[Page 121]

[31] (Pages 118 to 121)

<p>1 J. Vaughn</p> <p>2 Q. You understood that you had to</p> <p>3 arbitrate any claim or controversy under</p> <p>4 the agreement?</p> <p>5 A. Yes.</p> <p>6 Q. When you went to see Mr.</p> <p>7 Morelli for the release of the check, did</p> <p>8 you hand him a written revocation saying I</p> <p>9 don't want to go forward with this</p> <p>10 agreement?</p> <p>11 A. No.</p> <p>12 Q. Did you tell Mr. Morelli at</p> <p>13 that time I never agreed to arbitrate any</p> <p>14 claim or controversy after this?</p> <p>15 A. No.</p> <p>16 MS. LEWIS: I have nothing</p> <p>17 further.</p> <p>18 THE CHAIRMAN: Thank you.</p> <p>19 MR. BORTNICK: I have some</p> <p>20 questions.</p> <p>21 EXAMINATION BY</p> <p>22 MR. BORTNICK:</p> <p>23 Q. Mr. Vaughn, when you say that</p> <p>24 you signed a release in order to get the</p> <p>25 check, was that a release in the form of</p> <p style="text-align: right;">[Page 122]</p>	<p>1 J. Vaughn</p> <p>2 release, it was a statement saying these</p> <p>3 are the deductions from the \$200,000 and</p> <p>4 here is the Leeds & Morelli Brown check</p> <p>5 for the net?</p> <p>6 A. Correct.</p> <p>7 MR. BORTNICK: Nothing</p> <p>8 further.</p> <p>9 THE CHAIRMAN: Any recross.</p> <p>10 MR. HARPER: No.</p> <p>11 MS. LEWIS: Nothing further.</p> <p>12 ARBITRATOR LINDBERGH: I have</p> <p>13 a question. It is related to your</p> <p>14 statement.</p> <p>15 Mr. Vaughn, I'm looking for</p> <p>16 the date to be specific so that you</p> <p>17 can know it. It is Respondent's 2,</p> <p>18 Mr. Vaughn's statement. I wondered</p> <p>19 if you typed that yourself?</p> <p>20 THE WITNESS: No, I didn't.</p> <p>21 ARBITRATOR LINDBERGH: Do you</p> <p>22 recall who did type it?</p> <p>23 THE WITNESS: I submitted a</p> <p>24 statement which I have a copy of but</p> <p>25 this I think was done at Leeds &</p> <p style="text-align: right;">[Page 124]</p>
<p>1 J. Vaughn</p> <p>2 an agreement like I promise not to sue, or</p> <p>3 was it I give you the check and you are</p> <p>4 released, I'm acknowledging I'm getting a</p> <p>5 check?</p> <p>6 A. That was a statement with the</p> <p>7 deductions on it for DOW and for their</p> <p>8 fees and the amount of the check that was</p> <p>9 going to be given to me, that's what I</p> <p>10 signed that release for.</p> <p>11 Q. That was a check from Leeds &</p> <p>12 Morelli?</p> <p>13 A. Yes.</p> <p>14 Q. It was the \$200,000 settlement</p> <p>15 minus certain deductions?</p> <p>16 A. Yes.</p> <p>17 Q. And if I understood what you</p> <p>18 said, the release was just a document</p> <p>19 saying these are the deductions?</p> <p>20 A. Yes.</p> <p>21 MS. LEWIS: This is redirect.</p> <p>22 Why are you leading the witness like</p> <p>23 this?</p> <p>24 THE CHAIRMAN: Overruled.</p> <p>25 Q. The release when you call it a</p> <p style="text-align: right;">[Page 123]</p>	<p>1 J. Vaughn</p> <p>2 Morelli.</p> <p>3 ARBITRATOR LINDBERGH: Nothing</p> <p>4 further.</p> <p>5 THE CHAIRMAN: Mr. Vaughn,</p> <p>6 several times in the course of your</p> <p>7 testimony, for example, when you</p> <p>8 were talking about the Leeds Morelli</p> <p>9 retainer agreement --</p> <p>10 THE WITNESS: Yes.</p> <p>11 THE CHAIRMAN: -- you</p> <p>12 indicated that that wasn't really</p> <p>13 the full picture of what was</p> <p>14 transpiring between the two of you.</p> <p>15 Sometimes you called it a false</p> <p>16 statement or whatever.</p> <p>17 Could you elaborate on that as</p> <p>18 to what the full picture was as you</p> <p>19 saw it in this situation?</p> <p>20 THE WITNESS: Certainly.</p> <p>21 Again, when we signed this retainer</p> <p>22 or myself when I signed this</p> <p>23 retainer for Leeds & Morelli, we</p> <p>24 were or we had a bit of a group at</p> <p>25 that point. The group had or was</p> <p style="text-align: right;">[Page 125]</p>

[32] (Pages 122 to 125)

<p>1 J. Vaughn</p> <p>2 very much looking to take this</p> <p>3 public, this was not an issue of</p> <p>4 settling, this was strictly we</p> <p>5 wanted to go public with it and we</p> <p>6 wanted it to be -- and go to court.</p> <p>7 After talking with Leeds &</p> <p>8 Morelli, you know, they told us</p> <p>9 do otherwise and we followed suit</p> <p>10 with that. However, as far as the</p> <p>11 agreement is concerned they, again,</p> <p>12 when I signed not the retainer --</p> <p>13 are we talking about specifically</p> <p>14 the retainer.</p> <p>15 THE CHAIRMAN: That is one</p> <p>16 place.</p> <p>17 THE WITNESS: The retainer --</p> <p>18 again, the retainer was signed</p> <p>19 somewhere after, and if I remember</p> <p>20 correctly, somewhere around the time</p> <p>21 that we had already been or where we</p> <p>22 had already dealt with Prudential</p> <p>23 and knowing what they wanted to do</p> <p>24 with the cases. And we ended up</p> <p>25 signing the retainer afterwards. I</p> <p style="text-align: right;">[Page 126]</p>	<p>1 J. Vaughn</p> <p>2 put into this, but yes these are the</p> <p>3 things you will get as part of your</p> <p>4 settlement.</p> <p>5 So that's why when you asked</p> <p>6 questions about that I was a little</p> <p>7 reluctant because I know of a</p> <p>8 different story.</p> <p>9 THE CHAIRMAN: One other</p> <p>10 question. A little clarification</p> <p>11 about the relationship between the</p> <p>12 21 days that the agreement says that</p> <p>13 you had to consider the release and</p> <p>14 the signature in the bathroom; how</p> <p>15 did those two -- what was the time?</p> <p>16 THE WITNESS: For the</p> <p>17 signature --</p> <p>18 THE CHAIRMAN: You said you</p> <p>19 signed it in the bathroom.</p> <p>20 THE WITNESS: It was about two</p> <p>21 weeks afterwards, Steve called me to</p> <p>22 come down to his office in Carle</p> <p>23 Place, Long Island to pick up my</p> <p>24 check and that was two weeks after I</p> <p>25 signed this in the bathroom at</p> <p style="text-align: right;">[Page 128]</p>
<p>1 J. Vaughn</p> <p>2 know we did not all of us sign it up</p> <p>3 front, the retainers.</p> <p>4 As far as the settlement</p> <p>5 agreement is concerned, again, and I</p> <p>6 specifically said it over Prudential</p> <p>7 phones which were recorded at the</p> <p>8 time: Look, you guys are telling me</p> <p>9 that I'm going to be working for</p> <p>10 DOW, I'm going to get \$200,000 that</p> <p>11 is not taxable and I'm going to get</p> <p>12 long-term disability.</p> <p>13 The three people who were on</p> <p>14 the phone was Jeff Brown, Steve</p> <p>15 Morelli and Lenny Leeds, and all of</p> <p>16 them agreed that's what was going to</p> <p>17 happen.</p> <p>18 Now when I saw this in the</p> <p>19 bathroom at Tavern on the Green, I</p> <p>20 specifically asked Jeff, who was the</p> <p>21 one who presented it to me: Jeff,</p> <p>22 what about the long-term disability</p> <p>23 what about the job for DOW. That</p> <p>24 could not be put into this -- in his</p> <p>25 words, that could not actually be</p> <p style="text-align: right;">[Page 127]</p>	<p>1 J. Vaughn</p> <p>2 Tavern on the Green.</p> <p>3 ARBITRATOR LUBOW: Thank you.</p> <p>4 Had you not been afforded at</p> <p>5 least 21 days prior to signing it?</p> <p>6 In other words, you weren't given</p> <p>7 this 21 days before you signed it?</p> <p>8 THE WITNESS: No, not at all.</p> <p>9 I signed it the same day it was</p> <p>10 presented to me.</p> <p>11 THE CHAIRMAN: And had you</p> <p>12 been presented with the substance of</p> <p>13 this?</p> <p>14 THE WITNESS: Other than what</p> <p>15 I've just spoke about what the terms</p> <p>16 were of my settlement nothing per se</p> <p>17 in writing.</p> <p>18 THE CHAIRMAN: And how long</p> <p>19 before had that been presented to</p> <p>20 you?</p> <p>21 THE WITNESS: It would have to</p> <p>22 have been like I say maybe a week or</p> <p>23 so before. It was whenever that</p> <p>24 fundraiser for Carl McCall went on,</p> <p>25 that's when they informed me</p> <p style="text-align: right;">[Page 129]</p>

[33] (Pages 126 to 129)

1	J. Vaughn	1	J. Vaughn
2	basically and the day I left	2	but, he does have seven days to
3	Prudential for the day that was the	3	revoke it in writing and the
4	day they told me if you don't want	4	agreement, I think, specifically
5	to come back you don't have to come	5	provides that we don't cut the check
6	back, this is what you are getting.	6	until the seven days passes.
7	Later on I met them at Tavern on the	7	THE CHAIRMAN: Fine.
8	Green, where I first saw this	8	MR. HARPER: I don't think
9	agreement and signed it there at	9	there is a controversy between the
10	Tavern on the Green. And even then	10	parties that those time periods were
11	they went on to say, hey, this is	11	within the claimants' rights to
12	what you are getting. This is,	12	uphold or disregard.
13	there are certain things that aren't	13	THE CHAIRMAN: Fine.
14	in here, that is for whatever	14	MR. HARPER: I have nothing
15	obvious reasons but you will get	15	further.
16	those things. And, again,	16	MR. BORTNICK: Mr. Vaughn is
17	documentation, I have to prove that	17	our only witness we have nothing
18	they did try to go after those	18	more to press, we rest.
19	things.	19	THE CHAIRMAN: Do you have
20	THE CHAIRMAN: And you knew	20	any witnesses?
21	you had seven days to back out of	21	MR. HARPER: Prudential
22	this?	22	rests?
23	THE WITNESS: Yes.	23	THE CHAIRMAN: Do you have
24	THE CHAIRMAN: You didn't	24	any witnesses, Ms. Lewis?
25	consult -- did you consult another	25	MS. LEWIS: We rest.
	[Page 130]		[Page 132]
1	J. Vaughn	1	J. Vaughn
2	lawyer to review this?	2	MR. HARPER: Can I make a
3	THE WITNESS: No.	3	suggestion while we have burdened
4	THE CHAIRMAN: Thank you very	4	you with a great deal, I would like
5	much.	5	to read the transcript and submit a
6	MR. BORTNICK: Nothing	6	very, very short piece of paper.
7	further.	7	I don't think we need, I would
8	MR. HARPER: Nothing further	8	just be repeating whatever I said in
9	order.	9	terms of the closing, and if I have
10	MR. BORTNICK: I think Mr.	10	a transcript I might think it might
11	Harper is about to say there is not	11	inspire me but I'm not talking
12	an issue as as to whether the	12	anything voluminous. Ten pages
13	release was valid because he wasn't	13	tops.
14	afforded 21 days. We are not making	14	MR. BORTNICK: I think, Mr.
15	the claim he was short changed in	15	Harper, I appreciate what he is
16	the time. It means they have to	16	trying to say. I think we have the
17	hold the agreement open for 21 days	17	right for closing statements I
18	and he can sign it within half a	18	believe under the rules.
19	second of receiving it, that's	19	THE CHAIRMAN: Sure.
20	actually a DEA waiver.	20	MR. BORTNICK: I would like
21	MR. HARPER: And it has	21	to use my right.
22	nothing to do with the time of the	22	THE CHAIRMAN: You say you
23	execution, as Mr. Bortnick says he	23	want to file a posthearing brief?
24	can sign it immediately or he can	24	MR. HARPER: Yes.
25	decide to take the full 21 days, and	25	MR. BORTNICK: So we can
	[Page 131]		[Page 133]

[34] (Pages 130 to 133)

<p>1 J. Vaughn 2 argue after the closing about that? 3 THE CHAIRMAN: Yes. One 4 doesn't exclude the other. 5 MR. BORTNICK: I think I may 6 have misunderstood him. I intend to 7 burden you a little. 8 MR. HARPER: I know the rules 9 say it, but I was hoping to forebear 10 from the closing statement. 11 MR. BORTNICK: You need not 12 to. 13 THE CHAIRMAN: Proceed. 14 MR. BORTNICK: Rule 10301-D, 15 subsection 3 of the NASD rules. No 16 member or associated person -- we 17 are talking about Prudential here -- 18 shall seek to enforce any agreement 19 to arbitrate against a customer, 20 other member or person associated 21 with the member who has initiated in 22 court a punitive class action -- 23 that would be Mr. Vaughn -- or is a 24 member of a punitive or certified 25 class, with respect to any claims [Page 134]</p>	<p>1 J. Vaughn 2 and she said, no, it is for the 3 arbitrators to decide what was the 4 intention of the parties when the 5 agreement was signed. Specifically, 6 what was the intention with respect 7 to class actions. 8 She came up with three things 9 that she thought might be possible. 10 And one of them no one is arguing. 11 No one is arguing that it was the 12 intent of the parties to have class 13 arbitration, so we are left with 14 two, two possibilities. Okay. 15 So we want to know what the 16 intent of the agreement is. That's 17 easy, we swear, we put under oath 18 and ask the people that signed the 19 agreement, the people that entered 20 into the agreement, Mr. Vaughn and, 21 well, I thought Prudential. 22 Obviously, Leeds & Morelli 23 can't do it. The only thing they 24 possibly could have done, and I 25 thought they might be doing because [Page 136]</p>
<p>1 J. Vaughn 2 encompassed by the class action 3 unless and until -- and there's a 4 four separate things set out. For 5 example, unless and until the court 6 decides not to certify the class or 7 one of the class members opt out, 8 for example. But the point of the 9 rule is clear, Prudential under rule 10 10301-D3 is not even allowed to be 11 doing what it is doing here, and 12 that's why a statement of claim we 13 have specifically sought the relief 14 of a disciplinary referral against 15 Prudential because it is a direct 16 violation of this rule what they are 17 doing here, that's number one. 18 Number 2, this panel has had 19 way too much paper on why we are 20 here, and that's why I wanted today 21 read into the record what Judge 22 Coate said. She wanted to know -- 23 she wanted the arbitrators to 24 decide, not her, because we had 25 initially argued she should decide [Page 135]</p>	<p>1 J. Vaughn 2 Mr. Brown was on the witness list 3 because maybe he was going to show 4 up and said I advised Mr. Vaughn 5 that so forth and so on, but he 6 didn't say that, he wasn't here to 7 say that. 8 The only testimony you had is 9 Mr. Vaughn's testimony, and he 10 clearly said I didn't intend to 11 waive a class action. I did not 12 intend to make some kind of waiver 13 with conflict with the other part of 14 rule 10301 which has no class 15 actions at the NASD. 16 I was frankly shocked that 17 Prudential, at least at first I was 18 shocked that Prudential did not put 19 any witnesses on their witness list 20 and did not have anybody appear to 21 say what Prudential's intent was, 22 because then you would have a "he 23 said, she said." Mr. Vaughn says 24 one thing and Prudential would say 25 the other, and the panel would have [Page 137]</p>

[35] (Pages 134 to 137)

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<p>1 J. Vaughn 2 to figure it out. 3 We can only speculate, but 4 perhaps the best reason, the one 5 that makes the most sense is that 6 nobody from Prudential showed up is 7 because no one from Prudential was 8 going to come here and say something 9 that wasn't true. But it really 10 doesn't matter the only testimony 11 you have is Mr. Vaughn, that is the 12 only thing that can be relied on as 13 far as what were the intentions of 14 the parties not what is the basis of 15 Mr. Vaughn's class action case, not 16 whether he was happy with his 17 attorneys, not whether he thinks he 18 has to pay \$200,000 back to 19 Prudential to continue in court. 20 That is all just more than 21 window dressing. It is the circus 22 around why we are here. And you 23 only heard testimony from one 24 witness about intent and that's why 25 this case was sent here, and so</p> <p style="text-align: right;">[Page 138]</p>	<p>1 J. Vaughn 2 MR. HARPER: Yes. 3 MR. HARPER: Mr. Bortnick, 4 consistently overlooks Rule 10216-F 5 of the NASD rules which says, if a 6 member or a current or former 7 associated person of a member files 8 in court of the claim against a 9 member or current or former 10 associated person of a member that 11 includes matters that are subject to 12 mandatory arbitration, identified by 13 the rules of the association or by 14 private agreement, the defendant 15 party may move to compel arbitration 16 of the claims that are subject to 17 mandatory arbitration. 18 Pursuant to that right and 19 that rule we made a motion to compel 20 that the United States federal 21 district court granted in the face 22 of precisely the argument Mr. 23 Bortnick is making to you this 24 morning. 25 So the idea that we were in</p> <p style="text-align: right;">[Page 140]</p>
<p>1 J. Vaughn 2 really there is nothing left to do. 3 I don't see how there could be any 4 finding that there was an intent to 5 waive class action claims because 6 you heard no competent evidence that 7 would support that. 8 So we are left here in the 9 situation where the panel really, at 10 least in my view, has no choice but 11 to make a finding that the class 12 action can go forward and, frankly, 13 that Prudential should be, at least 14 that the panel doesn't have the 15 ability for a regulatory 16 disciplinary -- not to actually 17 impose the discipline, but it has 18 the panel to make the referral to 19 the appropriate district because it 20 is a clear violation of the rule in 21 trying to enforce a no class action 22 clause that they are not allowed to. 23 MR. BORTNICK: Thank you. 24 THE CHAIRMAN: Anything 25 further?</p> <p style="text-align: right;">[Page 139]</p>	<p>1 J. Vaughn 2 violation of this rule, and I note 3 that the rule on which Mr. Bortnick 4 relies 10301, does not refer to a 5 formerly associated person. They 6 could have put that in the rule, 7 they didn't, but they did put it in 8 the rule on your right to move to 9 compel. 10 Now, I'm at something of a 11 disability here because the lawyers 12 in the room know that in connection 13 with a communication between Mr. 14 Vaughn and his personally chosen 15 lawyer the lawyer Prudential had 16 absolutely nothing to do with 17 selecting for him. Prudential had 18 no right at all to communicate with 19 Mr. Vaughn directly that's an 20 ethical road in the Code of 21 Professional Responsibilities in New 22 York and in every model Rule of 23 Professional Conduct in the 50 24 jurisdictions. 25 So Prudential is uniquely</p> <p style="text-align: right;">[Page 141]</p>

[36] (Pages 138 to 141)

<p>1 J. Vaughn 2 disabled from having any knowledge 3 of what was said between Mr. Vaughn 4 and his lawyers that was subject to 5 a privilege at the time. And one 6 that would have sent us to ethics 7 jail had we attempted to try and 8 communicate with Mr. Vaughn about 9 the meaning of the agreement that 10 was for his handpicked lawyer to do, 11 and it is deeply unfair for Mr. 12 Vaughn to come in here and say he 13 has a right to sue me because his 14 handpicked lawyer he claims he 15 didn't understand the agreement that 16 between PSI and his lawyer because 17 his lawyer didn't explain it to him. 18 Now, Mr. Bortnick says Prudential 19 has no witness on intent and the 20 reason we have no witness on intent 21 is because Prudential expressed its 22 intent in plain, clear, unambiguous 23 language in the agreement and for 24 Mr. Bortnick to suggest that the 25 only evidence before you is Mr.</p> <p>[Page 142]</p>	<p>1 J. Vaughn 2 the judge says in her transcript. 3 So I think it is pretty clear 4 when you sign on to a arbitration 5 clause with an individual claim, 6 remember all he had was a individual 7 claim, not a class claim. He had an 8 individual claim that he was 9 discriminated against. And he said 10 he wanted to be paid \$200,000, and 11 he was by PSI in a mediation 12 process. 13 The system worked. The law 14 favors these kind of alternative 15 dispute resolution mechanisms. And 16 in Mr. Vaughn's case, it worked very 17 handsomely for him. And it would be 18 I think an unmistakable inference 19 arising from the clear and 20 unambiguous language of the contract 21 that when a person settles an 22 individual claim and agrees to 23 arbitrate any dispute over the 24 settlement agreement. For example, 25 if he doesn't get his Cobra, which I</p> <p>[Page 144]</p>
<p>1 J. Vaughn 2 Vaughn's ever changing ever shifting 3 testimony about what he understood 4 and didn't understand what was true 5 and what wasn't true is the only 6 evidence before you is quite untrue. 7 Of course, you have before you 8 the agreements that he signed that 9 very clear and unambiguous language 10 in them. Equally clear and 11 unambiguous is the transcript of 12 Judge Coate in response again to 13 exactly the arguments exactly the 14 arguments that Mr. Bortnick is 15 making to you, quote, the plaintiff 16 clearly agreed to the arbitration of 17 his claims. 18 And I ruled that the 19 arbitration agreement was valid and 20 enforceable and that legally was not 21 in dispute, and that what this panel 22 was to decide was what kind of 23 arbitration proceedings we would 24 have, what kind of arbitration 25 proceedings we would have, is what</p> <p>[Page 143]</p>	<p>1 J. Vaughn 2 happen to believe not to be true, 3 but I don't have the document here 4 to demonstrate it as a statutory 5 segue, so it would be quite bizarre 6 for Cobra not to have worked in 7 those circumstances. It is 8 egregiously unfair for Prudential to 9 have to be confronted again by 10 someone it settled with and be paid 11 in a clear and unambiguous contract, 12 what is now almost nine years ago or 13 eight years ago, at some point it is 14 time to stop. Thank you. 15 THE CHAIRMAN: You are next 16 MS. LEWIS: Let me start with 17 this, which is where we ended when 18 we were opening. Which is the 19 propriety of having Mr. Vaughn 20 testify at all. 21 And I think that Mr. Vaughn's 22 testimony was the quintessential 23 example of the wisdom of the law 24 that says when you have an agreement 25 the intent of the parties is the</p> <p>[Page 145]</p>

[37] (Pages 142 to 145)

<p>1 J. Vaughn</p> <p>2 objective intent, based upon the</p> <p>3 words in that agreement, and not the</p> <p>4 ability of the individuals to go</p> <p>5 back and try to remember what they</p> <p>6 did or did not intend eight years</p> <p>7 ago or nine years ago, whatever it</p> <p>8 is.</p> <p>9 Mr. Vaughn demonstrated that</p> <p>10 he understood certain parts and</p> <p>11 other parts maybe did not understand</p> <p>12 other parts, he didn't read some.</p> <p>13 Maybe he didn't read others very</p> <p>14 conveniently. And let us be honest,</p> <p>15 Mr. Vaughn, and his counsel will</p> <p>16 have to go back to federal court in</p> <p>17 order to seek his money, they have</p> <p>18 not sought any money here. They</p> <p>19 have conveniently turned the</p> <p>20 standard on its head, the court did</p> <p>21 not refer to this court or to the</p> <p>22 panel I mean the question of whether</p> <p>23 or not there was a knowing waiver of</p> <p>24 class actions. What was referred</p> <p>25 was a question of the interpretation</p> <p style="text-align: right;">[Page 146]</p>	<p>1 J. Vaughn</p> <p>2 arbitrated, can be brought back to</p> <p>3 court, notwithstanding that</p> <p>4 unambiguous clause because he has</p> <p>5 chosen to designate himself as the</p> <p>6 head of a class, when based upon an</p> <p>7 individually negotiated settlement</p> <p>8 puts this in a particularly unique</p> <p>9 position.</p> <p>10 Now in preparing for this</p> <p>11 hearing I actually went onto the</p> <p>12 NASD website, and the NASD website</p> <p>13 has a section that talks about we</p> <p>14 are not just looking to help the</p> <p>15 industry and the customers and the</p> <p>16 securities, we can offer dispute</p> <p>17 resolution to the commercial world</p> <p>18 and delve into individual questions</p> <p>19 and individual issues.</p> <p>20 This is not a customer claim,</p> <p>21 this is not even an employment</p> <p>22 claim. This is a commercial</p> <p>23 contract, a settlement agreement.</p> <p>24 And in that settlement agreement,</p> <p>25 the parties unambiguously agreed</p> <p style="text-align: right;">[Page 148]</p>
<p>1 J. Vaughn</p> <p>2 of the arbitration clause. And the</p> <p>3 testimony to the extent that it was</p> <p>4 consistent at all, was consistent</p> <p>5 with Mr. Vaughn knew and understood</p> <p>6 that any claim or controversy</p> <p>7 arising in connection with the</p> <p>8 agreement or its interpretation was</p> <p>9 to be arbitrated.</p> <p>10 And whether or not or what the</p> <p>11 rules were, he didn't inquire, he</p> <p>12 didn't care, he wanted his \$200,000</p> <p>13 and he received his \$200,000. He</p> <p>14 had opportunities to ask questions,</p> <p>15 he had opportunities to revoke, he</p> <p>16 didn't, as he testified, he just</p> <p>17 didn't care. That subsequently in</p> <p>18 order to evade and, frankly,</p> <p>19 fundamentally attack the quality of</p> <p>20 the alternative dispute resolution</p> <p>21 process, Mr. Vaughn, and his counsel</p> <p>22 can put his name in front of a</p> <p>23 punitive class action and claim that</p> <p>24 his individual claims that the court</p> <p>25 has already determined must be</p> <p style="text-align: right;">[Page 147]</p>	<p>1 J. Vaughn</p> <p>2 they were going to submit any claim</p> <p>3 or dispute and Mr. Vaughn has</p> <p>4 testified that he understood that</p> <p>5 that should be the end of the</p> <p>6 question that that should be this</p> <p>7 body in respect for arbitration and</p> <p>8 the alternative dispute process</p> <p>9 should have the discretion to say,</p> <p>10 he understood the clause, he</p> <p>11 understood everything, and it says</p> <p>12 on its face any claim or</p> <p>13 controversy. And we will go no</p> <p>14 further than that because the rest</p> <p>15 was just the rules that were going</p> <p>16 to be applied in that proceeding.</p> <p>17 In other words, as Mr. Harper</p> <p>18 aptly quoted what the court said:</p> <p>19 What the arbitration is going to</p> <p>20 look like, not whether or not an</p> <p>21 arbitration was going to be</p> <p>22 conducted or not.</p> <p>23 I would ask again that Mr.</p> <p>24 Vaughn's testimony be stricken</p> <p>25 because it should not be relevant to</p> <p style="text-align: right;">[Page 149]</p>

[38] (Pages 146 to 149)

1	J. Vaughn	1	J. Vaughn
2	this conversation. And point out in	2	language and it is clear on its
3	response to Mr. Bortnick's comments	3	face, but instead to say: We knew
4	that is the reason why we didn't	4	what we were doing when we stuck
5	compound the error by putting any	5	this in the agreement. We drafted
6	witness on at this time.	6	the agreement and we put this clause
7	The last thing is I would be	7	in because we wanted to make sure
8	remiss if I didn't go back and	8	there would never be a class action.
9	remind about the individual	9	That is easy to do, but they didn't.
10	respondents, you heard no word of	10	I think we probably can guess
11	testimony or heard no word in	11	why. The same thing for the Leeds &
12	argument they do not belong here and	12	Morelli defense. You could have put
13	in due difference to the panel there	13	on Mr. Brown when he said: I told
14	has been no referral to	14	Mr. Vaughn that, but they didn't
15	jurisdictional issues nor could	15	and, of course, we know why it's
16	there be. Thank you.	16	because that conversation with Mr.
17	MR. BORTNICK: I have a very	17	Vaughn and Mr. Brown never took
18	brief rebuttal.	18	place; so, in fact, these parties
19	THE CHAIRMAN: Yes.	19	are uniquely qualified to defend.
20	MR. BORTNICK: Over and over	20	Thank you.
21	I hear from Prudential as well as	21	THE CHAIRMAN: Thank you.
22	the Leeds & Morelli firm the	22	First of all, we are complete here.
23	individual that this is clear and	23	If that was a request that his
24	unambiguous, the arbitration clause	24	testimony be stricken, it is denied.
25	is clear and unambiguous. If it was	25	And I have a couple of questions for
	[Page 150]		[Page 152]
1	J. Vaughn	1	J. Vaughn
2	so clear and unambiguous, we never	2	the lawyers which I hope will help
3	would have been here. The judge	3	us.
4	would have said: Off to arbitration	4	First of all, Mr. Bortnick, I
5	you go. Instead she said, the	5	apologize for mangling your name
6	arbitrators have to figure out what	6	before. Why isn't it appropriate to
7	it means, and I can think of, she	7	read the reference in the provision.
8	says at the top of page 4 of the	8	The reference to the NASD rules as
9	transcript at least three different	9	shorthand for no class actions.
10	things and maybe there are more. It	10	MR. BORTNICK: You mean in
11	was clearly ambiguous to her at	11	this context or generally speaking?
12	least.	12	THE CHAIRMAN: I don't think
13	And that's why she said, and I	13	it makes a difference.
14	quoted earlier, you need to figure	14	MR. BORTNICK: I'm sorry, I
15	out the arbitrator -- she said the	15	just don't understand the question.
16	arbitrator, but we are talking about	16	You mean in this particular case or
17	a panel here -- what are the party's	17	this context or other.
18	intentions, that is the word she	18	THE CHAIRMAN: I'm not sure
19	uses "intentions." We read that	19	there is any difference.
20	earlier.	20	MR. BORTNICK: There is in
21	And so Prudential is not	21	the sense there are class actions as
22	uniquely disabled, it is uniquely	22	the panel is aware that go on every
23	qualified to put on a defense here.	23	day against the securities industry.
24	Bring up the Prudential witness who	24	I mean there must be hundreds in
25	is not going to say I can read the	25	court right now, you know, that's an
	[Page 151]		[Page 153]

[39] (Pages 150 to 153)

<p>1 J. Vaughn</p> <p>2 everyday occurrence, all the 10B5</p> <p>3 cases, the tort reform, and so</p> <p>4 forth. Of course there are class</p> <p>5 actions that exist. And the rule is</p> <p>6 there because the NASD for the stock</p> <p>7 exchange are equipped as forums to</p> <p>8 handle the administration of a class</p> <p>9 action. They've decided there are</p> <p>10 certain kinds of cases they are not</p> <p>11 going to hear, class actions are one</p> <p>12 of them.</p> <p>13 It doesn't mean that I as a</p> <p>14 buyer, and I never bought World Com</p> <p>15 at least not to my knowledge I</p> <p>16 bought a mutual fund, but as a</p> <p>17 purchaser of World Com doesn't mean</p> <p>18 I've waived my rights to a class</p> <p>19 action against you know there were</p> <p>20 lawsuits against --</p> <p>21 THE CHAIRMAN: I don't think</p> <p>22 you understand me. There is a</p> <p>23 provision here it says: Here is</p> <p>24 what is going to happen if there is</p> <p>25 a dispute, we are going to go to</p> <p style="text-align: right;">[Page 154]</p>	<p>1 J. Vaughn</p> <p>2 bringing a class action against</p> <p>3 Merrill Lynch for wrong research or</p> <p>4 CSFP is a better example because</p> <p>5 those were the claims that were made</p> <p>6 by other firms not me. So everybody</p> <p>7 has the same agreement when you have</p> <p>8 a customer agreement in a customer</p> <p>9 case, I agree to -- if I have a</p> <p>10 dispute with my broker, Merrill</p> <p>11 Lynch, I agree to arbitrate pursuant</p> <p>12 to the rules of the NASD but not for</p> <p>13 class actions, that's why the class</p> <p>14 actions exist.</p> <p>15 Moreover, it is a question of</p> <p>16 what is the intent of the actual</p> <p>17 people, what is the intent to them</p> <p>18 at the time they are signing it, the</p> <p>19 two parties to get down to the</p> <p>20 micro. And that's why I said</p> <p>21 Prudential should have had someone</p> <p>22 saying what they thought it meant.</p> <p>23 THE CHAIRMAN: Suppose the</p> <p>24 NASD has more onerous pleading</p> <p>25 rules -- just hypothetical -- than a</p> <p style="text-align: right;">[Page 156]</p>
<p>1 J. Vaughn</p> <p>2 arbitration under the rules of the</p> <p>3 NASD. And I'm wondering why it is</p> <p>4 not appropriate to read that phrase</p> <p>5 as "just as it means whatever the</p> <p>6 time periods are for pleading in the</p> <p>7 NASD as no class actions" it is a</p> <p>8 different way of saying it, in other</p> <p>9 words.</p> <p>10 MR. BORTNICK: I understand.</p> <p>11 First of all, because this is also</p> <p>12 the rule that firms aren't allowed</p> <p>13 to oppose a class action claim that</p> <p>14 I read to the panel. But the</p> <p>15 fundamental issue here is by</p> <p>16 agreeing to arbitrate, pursuant to</p> <p>17 the rules of the NASD -- which is</p> <p>18 pretty near exactly what the</p> <p>19 agreement says -- the rules are</p> <p>20 clear, just like anyone else that is</p> <p>21 arbitrating, I agree to arbitrate</p> <p>22 pursuant to the rules of NASD if I</p> <p>23 buy a share of World Com from my</p> <p>24 broker at Merrill Lynch. It doesn't</p> <p>25 mean I have been prohibited from</p> <p style="text-align: right;">[Page 155]</p>	<p>1 J. Vaughn</p> <p>2 judicial process, has a shorter</p> <p>3 statute of limitations than the</p> <p>4 judicial process; how is that</p> <p>5 different from the case where the</p> <p>6 claimant says -- the claimant says I</p> <p>7 didn't mean to submit to those</p> <p>8 rules, those rules are tougher than</p> <p>9 the rules in the judicial process, I</p> <p>10 didn't mean to submit to those.</p> <p>11 MR. BORTNICK: Again,</p> <p>12 perhaps, I'm not understanding the</p> <p>13 question. He is agreeing to submit</p> <p>14 to rules that prohibit class actions</p> <p>15 from being heard in this forum, but</p> <p>16 permit them to go on in the courts.</p> <p>17 That's why I use the example of all</p> <p>18 security industry class action</p> <p>19 cases. To my knowledge nobody's</p> <p>20 ever argued to any NASD or New York</p> <p>21 stock exchange panel when MillBerg</p> <p>22 Weiss or Burnstein Lidowitz the mega</p> <p>23 class action firms bring a class</p> <p>24 action case against the securities</p> <p>25 industry like Prudential or similar</p> <p style="text-align: right;">[Page 157]</p>

[40] (Pages 154 to 157)

1	J. Vaughn	1	J. Vaughn
2	firms. No one has ever made the	2	accounts at --
3	argument, you have a customer	3	THE CHAIRMAN: I assume that
4	agreement that says you only -- that	4	is what you are saying?
5	says something different. But with	5	MR. BORTNICK: Yes.
6	respect to the issue of class	6	MR. HARPER: He actually
7	actions, this is the first time I	7	worked at Solomon Smith Barney.
8	ever heard the argument being made.	8	MR. BORTNICK: Yes, I'm
9	And the reason -- and I don't	9	sorry.
10	understand why it is being made	10	MR. HARPER: And they were
11	because the parties agreed to	11	arbitrated because my firm
12	arbitrate pursuant to rules. And	12	represented Solomon Smith Barney in
13	those rules mean class actions are	13	those arbitrations.
14	in court. And in fact certain	14	What I heard Mr. Bortnick say,
15	discriminations at the option of the	15	is that if he buys a share of stock
16	employee under most circumstances	16	he can't be a member of a 10B5 class
17	are also in the court by the way.	17	action. When I buy a share of stock
18	The U-4, which I know the	18	I don't sign an arbitration
19	panel is familiar with has standard	19	agreement. My understanding is that
20	form language that says the employee	20	I assume he was referring to a suit
21	agrees to bring all actions arising	21	against the broker.
22	out of that employment to	22	MR. BORTNICK: The customer
23	arbitration, but also in the rules	23	MR. HARPER: If it is a claim
24	but not in the U4 was a change some	24	of say an unauthorized trade or if
25	years ago to the NASD and the New	25	it is a claim that I was defrauded
	[Page 158]		[Page 160]
1	J. Vaughn	1	J. Vaughn
2	York State Stock Exchange rules that	2	by Mr. Grubman's analyst reports
3	said: If you have a sex	3	into acquiring excessive World Com
4	discrimination lawsuit, race	4	stock, that's an arbitration.
5	discrimination lawsuit, you may	5	THE CHAIRMAN: And you are
6	choose to bring that in court. So	6	suggesting it's a possible class
7	it is the same thing here. Class	7	action?
8	actions, they can't be heard here.	8	MR. BORTNICK: There are class
9	THE CHAIRMAN: The first	9	actions and, in fact, now that you
10	question to Mr. Harper and Ms.	10	are saying it, it is a case I'm not
11	Lewis: Is this like the customer	11	involved in in my office -- there is
12	case he is referring to?	12	a class action or was a class action
13	MR. HARPER: No, because if I	13	against Solomon Smith Barney over
14	buy a share of World Com, and then	14	World Com stock because our two
15	sue the officers and directors of	15	firms have an issue as to whether
16	World Com in a class action, I	16	one of our clients opted out of the
17	haven't signed any arbitration.	17	suit because he wanted to go to
18	MR. BORTNICK: I'm saying,	18	arbitration or pursuing it in
19	for example, the World Com suit, as	19	arbitration, and there is a question
20	you understand it, that is one	20	of whether he opted out of the
21	example they sued a lot of	21	lawsuit and is allowed to go to
22	individuals but they also sued	22	arbitration.
23	Credit Suisse, First Boston, where I	23	And Mr. Harper was very
24	believe Mr. Jack Krupman worked for	24	careful, he did not say that a
25	bad research. You have brokerage	25	purchaser of a share of World Com
	[Page 159]		[Page 161]

[41] (Pages 158 to 161)

1 J. Vaughn	1 J. Vaughn
2 can't be a member of a class because	2 ultimately settled. So we don't know
3 again the broker -- what he said if	3 where it went. But the Second
4 it was an unauthorized trade or	4 Circuit felt that the southern
5 something like that in general, but	5 district judge who was hearing it
6 he knows that there are, I don't	6 was so in error for not considering
7 know, thousands of people that	7 the arbitration clauses that were
8 bought World Com that was part of	8 contained in these other private
9 the lawsuit and the ultimate	9 agreements that they were reversed
10 settlement of the World Com class	10 and sent it back for purposes of
11 action in which Solomon Smith Barney	11 determining whether what, if
12 was a defendant, those are real	12 anything, had to be arbitrated.
13 class actions in court.	13 Here we are in a different
14 THE CHAIRMAN: And were these	14 circumstance. We have not an
15 suits in which the arbitration	15 employment contract, not a
16 clause was raised as you can't sue	16 discrimination contract, not a
17 us?	17 securities contract. We have a
18 MR. BORTNICK: I'm sure it	18 commercial contract between two
19 was never raised, to tell you the	19 independently represented people
20 truth.	20 which resolved the dispute and it is
21 MS. LEWIS: If I may	21 from that the claim that we are
22 interject because there are cases	22 addressing is arising. And whether
23 there that are out there that we	23 or not as we have argued, Mr.
24 have cited to you that we discussed,	24 Vaughn's claim --
25 where that circumstance has been	25 THE CHAIRMAN: What is the
[Page 162]	[Page 164]
1 J. Vaughn	1 J. Vaughn
2 raised and there is a class action	2 difference you are referring to?
3 suit in addition with the securities	3 MS. LEWIS: Because Mr.
4 fraud litigation and related claims	4 Vaughn, as Mr. Harper was addressing
5 were made regarding individuals who	5 in cross-examination, made certain
6 would either have a contract for	6 promises an received payment for
7 services or professionals. And the	7 those promises. And one of the
8 court makes an analysis as to	8 promises made was: I will arbitrate
9 whether or not the claims fall	9 any claim or dispute and that is a
10 within the arbitration clause and	10 promise between two parties without
11 whether or not they are encompassed	11 regard to anybody else and the court
12 with the classic action.	12 has --
13 So what Mr. Bortnick has been	13 THE CHAIRMAN: How is that
14 dismissing as just so much legal	14 different from the customer
15 gobbledegook that we've put before	15 agreement?
16 the arbitrators is very relevant	16 MS. LEWIS: Because the
17 here. In fact, Mr. Bortnick cited	17 customer agreements, first of all,
18 several cases in regarding the	18 have certain statutory requirements,
19 foreign currency tax shelters, but I	19 and they have certain questions as
20 personally was involved in	20 to whether or not there is even true
21 representing lawyers. And the	21 arm's length transaction. And here
22 Second Circuit reverts to the denial	22 is your agreement take it or leave
23 of the motion to compel arbitration	23 it. But even those cases I pointed
24 in that case, and it was sent back	24 out, and refer the panel to the
25 to the district court and the case	25 Canon versus Gun Allen case. In
[Page 163]	[Page 165]

[42] (Pages 162 to 165)

1	J. Vaughn	1	J. Vaughn
2	that case the court said, well, yes	2	fundamentally says that there was
3	it is a securities fraud claim but	3	something, that he called it a
4	vis-a-vis the professional it has a	4	secret in his testimony, between
5	contract, we are going to look at	5	Leeds & Morelli and Prudential
6	what should be arbitrated and we are	6	attorneys that he didn't know about
7	going to look at that first.	7	that affected the agreement. So he
8	Because if we settle an arbitration	8	brought a class action, and the
9	that is going to formulate what has	9	judge said, well, he could have
10	to be addressed, if anything has to	10	technically waived his right to
11	be addressed in class action.	11	bring a class action at all
12	Here, the court has determined	12	depending on what his intent or what
13	Mr. Vaughn's individual claim must	13	the intention of the parties were to
14	be arbitrated. So if we address	14	the agreement.
15	that or had we addressed that, had	15	And that's why I keep coming
16	it been brought in arbitration it	16	back to the intention of Jeffrey
17	might have formulated whether or not	17	Vaughn and the intention of
18	Mr. Vaughn's claim could ever be	18	Prudential. And you only had the
19	included in a class action if his	19	testimony on one because that's what
20	individual claim is identical to	20	if judge said. In the Gun Allen
21	what he would claim as a class	21	case the way they characterize it on
22	action.	22	page 10 of their I guess reply
23	THE CHAIRMAN: Proceed.	23	brief, is not a particularly
24	MR. BORTNICK: Yes. The Gun	24	remarkable point. You only, you
25	Allen case she refers to, and I'm	25	can't sweep into court things that
	[Page 166]		[Page 168]
1	J. Vaughn	1	J. Vaughn
2	not saying I agree with her	2	are not part of the class action,
3	characterization of it, but the way	3	that's unremarkable.
4	they characterized it in their	4	MR. HARPER: I have something
5	motion papers was that there was no	5	else.
6	arbitration for claims that were	6	THE CHAIRMAN: Yes.
7	encompassed by a pending class	7	MR. HARPER: I think there
8	action.	8	are lots of reasons why this panel
9	In other words, claims that	9	should hold Mr. Vaughn to his
10	are part of the class action go to	10	promise, but I think one of the
11	court and don't get arbitrated,	11	things that, Mr. Chairman, I think
12	that's what their characterization	12	you are going to, is what is going
13	of the Gun Allen case is.	13	on between this and the typical
14	The case that Mr. Vaughn	14	customer and/or the typical employee
15	brought, he is the one bringing the	15	claim.
16	class action claim so, of course,	16	And I think what Ms. Lewis has
17	the claim that he would otherwise	17	been trying to say is because it is
18	have, the so-called individual claim	18	neither, it is neither a customer
19	is the class action claim, there is	19	complaining about a trade nor is it
20	no difference and it's just to think	20	an employee complaining about racial
21	of it any other way is just not only	21	or sex discrimination or age
22	flat-out wrong, but it is	22	discrimination.
23	nonsensical.	23	It is an employee complaining
24	He has brought a claim, a	24	about an arm's length agreement that
25	class action claim in court that	25	exchanged consideration, and had a
	[Page 167]		[Page 169]

[43] (Pages 166 to 169)

<p>1 J. Vaughn</p> <p>2 dispute resolution clause that</p> <p>3 happened to refer to the procedures</p> <p>4 of the NASD, and which is shorthand</p> <p>5 for no class action, which makes</p> <p>6 perfect sense because there was no</p> <p>7 class action to begin with, it was a</p> <p>8 unique individualized claim that Mr.</p> <p>9 Vaughn was settling.</p> <p>10 And I can't emphasize enough,</p> <p>11 how I'm standing here eight years</p> <p>12 later having paid all the</p> <p>13 consideration having lived up to my</p> <p>14 part of the bargain in every respect</p> <p>15 and I'm still arguing with somebody</p> <p>16 who hasn't worked for me in nine</p> <p>17 years who settled with me nine years</p> <p>18 ago or eight years ago, or whatever</p> <p>19 it is, and I'm still expending</p> <p>20 resources trying to uphold an</p> <p>21 agreement that has dust on it.</p> <p>22 And I would respectfully</p> <p>23 suggest that fairness occupies a</p> <p>24 place or ought to occupy a place at</p> <p>25 the table.</p> <p style="text-align: right;">[Page 170]</p>	<p>1 J. Vaughn</p> <p>2 the cases in New Jersey and the</p> <p>3 cases all across the country you</p> <p>4 signed an agreement, you are</p> <p>5 dispositively presumed, irrefutably</p> <p>6 presumed to have understood the</p> <p>7 terms and conditions of that</p> <p>8 contract.</p> <p>9 And you cannot come in eight</p> <p>10 years later and say: My lawyer</p> <p>11 didn't tell me this. And to say it</p> <p>12 to me, when I wasn't his lawyer and</p> <p>13 when I had no right to communicate</p> <p>14 with him.</p> <p>15 This is not about knowing and</p> <p>16 voluntary waiver because that</p> <p>17 concept applies only to substantive</p> <p>18 rights, and the Supreme Court, every</p> <p>19 federal circuit, every federal</p> <p>20 district court has held time and</p> <p>21 time again that to agree to an</p> <p>22 alternate dispute resolution process</p> <p>23 is not to forego a substantive right</p> <p>24 because the courts have faith in</p> <p>25 these processes to vindicate those</p> <p style="text-align: right;">[Page 172]</p>
<p>1 J. Vaughn</p> <p>2 Mr. Bortnick can cite all the</p> <p>3 rules he wants about the NASD, but</p> <p>4 he can't address the simple facts</p> <p>5 that the rules of the NASD</p> <p>6 specifically allowed me to go into</p> <p>7 court to compel arbitration against</p> <p>8 a former employee. That is what the</p> <p>9 rule says. The rule does not forbid</p> <p>10 me to make a motion to compel</p> <p>11 arbitration against a former</p> <p>12 employee.</p> <p>13 Mr. Vaughn was a former</p> <p>14 employee when he signed the</p> <p>15 agreement and when he got the check.</p> <p>16 And he was a former employee when he</p> <p>17 brought the class action. And so</p> <p>18 the notion that we are here to</p> <p>19 decide about the intention of the</p> <p>20 parties when the intention of the</p> <p>21 parties is set out in a contract</p> <p>22 that Mr. Vaughn promised me he</p> <p>23 understood and read at the time,</p> <p>24 that the law presumes he understood</p> <p>25 and read. The cases in New York and</p> <p style="text-align: right;">[Page 171]</p>	<p>1 J. Vaughn</p> <p>2 rights.</p> <p>3 MR. BORTNICK: I want to</p> <p>4 respond. It has been raised several</p> <p>5 time here and and I want to address</p> <p>6 this fairness issue. I'm standing</p> <p>7 here eight years later having to</p> <p>8 defend.</p> <p>9 The flip answer to the other</p> <p>10 side of that is the truth here at</p> <p>11 least the claim in this case is if</p> <p>12 we don't hold you to account for</p> <p>13 what you did eight years ago, you</p> <p>14 get away with doing something really</p> <p>15 bad, and so that's why you are here.</p> <p>16 THE CHAIRMAN: One at a time.</p> <p>17 We don't want to rehear the</p> <p>18 testimony.</p> <p>19 MR. BORTNICK: Mr. Vaughn</p> <p>20 said it came up in a question</p> <p>21 several times during cross, what the</p> <p>22 case is about and what the class</p> <p>23 action complaint is about.</p> <p>24 And so this whole idea of</p> <p>25 fairness, The fairness is not to let</p> <p style="text-align: right;">[Page 173]</p>

[44] (Pages 170 to 173)

1	J. Vaughn	1	J. Vaughn
2	an injustice be gone unaddressed.	2	30thank you very much.
3	And that's why the class action is	3	Thank you for your patience
4	here because this is just like any	4	and good spirit.
5	other class action, the amount --	5	
6	that is why it is a class action,	6	(Whereupon, at 1:30 P.M., the
7	the amount, Mr. Vaughn has been	7	arbitration was concluded.)
8	damaged either there's a legal	8	
9	theory it has to do with the amount	9	
10	of the -- I don't think we have to	10	
11	go there. It is not about the	11	
12	\$200,000, but the amount that he is	12	
13	damaged is so small that it	13	
14	doesn't --	14	
15	THE CHAIRMAN: We understand	15	
16	the purpose of class actions.	16	
17	MR. BORTNICK: Fine.	17	
18	THE CHAIRMAN: Will each of	18	
19	the parties state affirmatively	19	
20	whether you had a full and fair	20	
21	opportunity to be heard.	21	
22	MR. BORTNICK: Yes.	22	
23	MS. LEWIS: Yes.	23	
24	MR. HARPER: Yes,	24	
25	exhaustively, Mr. Chairman.	25	
	[Page 174]		[Page 176]
1	J. Vaughn	1	J. Vaughn
2	THE CHAIRMAN: We will take	2	INDEX
3	that for a yes. The decision will	3	
4	be forwarded to the parties and/or	4	WITNESS EXAMINATION BY PAGE
5	their counsel in order to expedite	5	J.VAUGHN Mr. Bortnick 36, 121
6	the delivery of the panel's decision	6	Mr. Harper 54
7	to the parties, the panel may either	7	Ms. Lewis 108
8	execute a handwritten copy of the	8	EXHIBITS
9	award or each arbitrator may execute	9	
10	a counterpart copy of the award.	10	EXHIBITS DESCRIPTION PAGE
11	And ASD is not responsible for the	11	1 Opinion and order of Judge
12	disposal of any documents left here.	12	Coate dated August 12, 2005 38
13	So if you want to retain secure	13	2 Transcript of the hearing in
14	control of them, you should take	14	front of Judge Coate dated
15	them with you when you leave.	15	September 5, 2006 38
16	The record will remain open	16	3 Settlement agreement between
17	until the panel arrives at a	17	Mr. Vaughn and Prudential
18	decision or the panel determines	18	Securities, dated October 1998 38
19	that it is closed. No party will	19	RESPONDENTS'
20	contact any member of the	20	1 Agreement 61
21	arbitration panel directly. All	21	2 Five-Page document 72
22	communications are to be directed to	22	
23	the staff person assigned to this	23	
24	case. We request that the parties	24	
25	leave the room at the same time.	25	
	[Page 175]		[Page 177]

[45] (Pages 174 to 177)

1	CERTIFICATE	
2		
3	STATE OF NEW YORK)	
4) : ss.	
5	COUNTY OF NEW YORK)	
6		
7	I, WILLIAM BYRNE, a Notary	
8	Public within and for the State of New	
9	York, do hereby certify that the within is	
10	a true and accurate transcript of the	
11	proceedings taken on April 23, 2007.	
12	I further certify that I am not	
13	related to any of the parties to this	
14	action by blood or marriage and that I am	
15	in no way interested in the outcome of this	
16	matter.	
17	IN WITNESS WHEREOF, I have	
18	hereunto set my hand this 5th day of May,	
19	2007.	
20		
21		
22	<u>WILLIAM BYRNE</u>	
23		
24		
25		

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EXHIBIT “E”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
JEFFREY S. VAUGHN, individually and on :
behalf of those class members similarly :
situated, :

Plaintiff, :

-v- :

LEEDS, MORELLI & BROWN, P.C., LEEDS, :
MORELLI & BROWN, L.L.P., LEEDS & :
MORELLI, LEEDS, MORELLI & BROWN, :
PRUDENTIAL SECURITIES, INC., PRUDENTIAL :
FINANCIAL, INC., LENARD LEEDS, STEVEN :
A. MORELLI, JEFFREY K. BROWN, and JOHN :
DOES, JAMES VAGNINI, FREDERIC DAVID :
OSTROVE, ROBERT JOHN VALLI, JR., :
DISCRIMINATION ON WALL STREET, INC. and :
DISCRIMINATION ON WALL STREET :
MANHATTAN, INC., and JOHN DOES, ESQS. :
1-10 and JANE DOES, ESQS., 1-10 a :
fictitious designation for presently :
and unknown licensed attorneys, :
professionals and/or unknown persons or :
entities, :

Defendants. :
:
-----X

04 Civ. 8391 (DLC)

OPINION AND ORDER

Appearances:

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1285 Avenue of the Americas
New York, New York 10019

DENISE COTE, District Judge:

The plaintiff, Jeffrey S. Vaughn ("Vaughn"), has brought this putative class action against his employer and the lawyers he retained to represent him in an employment discrimination dispute against his employer, alleging that the settlement agreement that resolved the dispute (the "Agreement") was a product of secret collusion between his employer and his lawyers. The defendants have moved to dismiss this action and to compel arbitration, relying on an arbitration provision in the Agreement. Vaughn contends that the arbitration provision does not control, because the arbitration rules provided for in the Agreement do not permit class actions, and his lawyers are not parties to the Agreement. For the following reasons, the motion to compel arbitration is granted and the case is stayed until the resolution of the arbitration proceedings.

BACKGROUND

The following facts are taken from Vaughn's amended complaint unless otherwise noted. In 1998, Vaughn retained lawyers from Leeds, Morelli & Brown, P.C. (collectively "Leeds Defendants"), to assert employment discrimination claims against his employer, Prudential Securities Incorporated, for which Prudential Financial Inc. is a successor in interest (collectively "Prudential Defendants"). Vaughn pursued these claims through alternative dispute resolution procedures including mediation. The dispute between Vaughn and the Prudential Defendants produced the Agreement dated October 27, 1998. The Agreement, which is incorporated by reference in the Complaint and on which Vaughn has relied in part in bringing this action, granted the Prudential Defendants a general release of claims in exchange for \$200,000.00. The Agreement also contains the following arbitration provision:

Any claim or controversy arising out of or related to this Agreement or the interpretation thereof will be settled by arbitration under the then prevailing constitution and rules of the New York Stock Exchange, Inc., or the National Association of Securities Dealers, Inc. Judgment based upon the decision of the arbitrators may be entered in any court having jurisdiction thereof. The governing law of this Agreement shall be the substantive and procedural law of the State of New York.

(Emphasis supplied.)

Vaughn alleges that the Leeds Defendants and Prudential Defendants had a "secret agreement" dated February 13, 1998 that was part of an employment discrimination dispute resolution system that the Leeds Defendants had established, and that would

enable the Prudential Defendants to cap damages paid to various plaintiffs and settle numerous claims with plaintiffs represented by the Leeds Defendants at one time with a lump sum payment while providing direct payment of attorney's fees to the Leeds Defendants. Vaughn claims that he only learned of the existence of the secret agreement in or about October 2004. He initiated this action on October 25, 2004, and filed an amended complaint ("Complaint") on March 15, 2005.

Vaughn has styled this action as a class action based on his allegation that hundreds of other Prudential employees with discrimination claims against the company were adversely affected by collusion between the Leeds Defendants and the Prudential Defendants based on this or other secret agreements. Vaughn asserts claims for common law fraud, conspiracy to defraud, aiding and abetting fraud, tortious interference with a contract, breach of fiduciary duty, breach of contract, breach of the implied covenant of good faith and fair dealing, and violations of the Racketeer Influenced Corrupt Organization Act ("RICO").

The Prudential Defendants and the Leeds Defendants both have filed motions to dismiss or to compel arbitration. The Prudential Defendants contend that because the Agreement contains an arbitration provision, this matter should be referred to arbitration, and that this Court does not have subject matter jurisdiction because the only mechanism conferring federal question jurisdiction is the RICO claim, which the Prudential Defendants argue is time-barred and insufficiently pleaded. The Leeds Defendants advance similar arguments, and add, among other

things, that the arbitration clause equitably estops Vaughn from pursuing his claims in federal court notwithstanding the fact that the Leeds Defendants are not parties to the Agreement. Vaughn argues among other things that because the arbitration rules provided for in the Agreement do not permit class actions, and he has styled his claim as a class action, this matter should not be referred to arbitration.

DISCUSSION

1. The Prudential Defendants

The FAA was designed to "ensure judicial enforcement of privately made agreements to arbitrate." Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 219 (1985). The FAA represents "a strong federal policy favoring arbitration as an alternative means of dispute resolution." JLM Indus., Inc. v. Stolt-Nielsen SA, 387 F.3d 163, 171 (2d Cir. 2004) (citation omitted). Therefore, "under the FAA, 'any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.'" Id. (quoting Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983)). The FAA requires that a contract provision to arbitrate disputes arising out of the contract "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

Under the FAA, unless parties have unambiguously provided

for an arbitrator to decide questions of arbitrability, it is for courts to decide whether the parties agreed to arbitrate. Contec Corp. v. Remote Solution Co., 398 F.3d 205, 208 (2d Cir. 2005).

A court deciding a motion to compel arbitration must resolve four issues: (1) whether the parties agreed to arbitrate; (2) the scope of the agreement to arbitrate; (3) if federal statutory claims are asserted, whether Congress intended those claims to be nonarbitrable; and (4) if some, but not all, of the claims are arbitrable, whether to stay the balance of the proceedings pending arbitration. JLM Indus., 387 F.3d at 169. In this case, the Prudential Defendants and Vaughn agree that all of Vaughn's claims are arbitrable and that Vaughn agreed to the arbitration provision. They merely dispute whether the scope of the arbitration provision includes claims styled as class actions.

In the absence of "clear and unmistakable evidence to the contrary" in an arbitration clause, only in limited circumstances will a court "assume that the parties intended courts, not arbitrators, to decide a particular arbitration-related matter." Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444, 452 (2003) (citation omitted). "These limited instances typically involve matters of a kind that contracting parties would likely have expected a court to decide." Id. (citation omitted). "They include certain gateway matters, such as whether the parties have a valid arbitration agreement at all or whether a concededly binding arbitration clause applies to a certain type of controversy." Id. The question of whether arbitration clauses "forbid class arbitration . . . does not fall into this narrow

exception" because it involves "neither the validity of the arbitration clause nor its applicability to the underlying dispute between the parties." Id. Thus, in a case where an arbitration clause provided that the parties "agreed to submit to the arbitrator 'all disputes, claims, or controversies arising from or relating to this contract,'" the Supreme Court held that a dispute about whether the arbitration clause "forbids the use of class arbitration procedures . . . is a dispute 'relating to this contract.'" Id. at 451 (emphasis in original).¹ In such a case, it was apparent that the parties "agreed that an arbitrator, not a judge, would answer the relevant question." Id. at 452.

The arbitration clause in the Agreement contains "sweeping language concerning the scope of the questions committed to arbitration," id. at 453, as it commits to arbitration "any claim or controversy arising out of or related to this Agreement or the interpretation thereof." (Emphasis supplied.) Vaughn claims that because the arbitration clause states that the contemplated arbitration will use the "rules of the New York Stock Exchange, Inc., or the National Association of Securities Dealers, Inc.," and those rules do not permit class action arbitrations, the parties could not have intended that the class action he now brings would be arbitrated. This interpretation,

¹ In Bazzele, an issue was whether arbitration clause language providing that disputes "shall be resolved . . . by one arbitrator selected by us [Green Tree] with consent of you [Green Tree's customer]" forbade class action arbitrations because the "consent of you" language was arguably inconsistent with multiple claimants. Bazzele, 539 U.S. at 450.

however, contradicts the clear statement that the arbitration clause applies to "any" claim or controversy related to the Agreement. Even assuming that Vaughn is right, and the applicable arbitration rules do, indeed, forbid class action arbitrations under all circumstances, it would be plausible to interpret the arbitration clause to require all claims to be arbitrated and to disallow class actions with no further qualifications or caveats. Here, as in Bazzle, the question is "not whether the parties wanted a judge or an arbitrator to decide whether they agreed to arbitrate a matter," but rather "what kind of arbitration proceeding the parties agreed to." Bazzle, 539 U.S. at 452 (emphasis in original). This question "concerns contract interpretation and arbitration procedures," and is therefore "for the arbitrator, not the courts, to decide." Id. at 453. The Prudential Defendants' motion to compel arbitration is accordingly granted.²

2. The Leeds Defendants

The common law doctrine of estoppel may bind a nonsignatory to an arbitration agreement. JLM Indus., 387 F.3d at 177. See also Choctaw Generation Ltd. P'ship v. Am. Home Assurance Co.,

² The defendants argue that the Complaint fails to state a claim for a RICO violation, and therefore, there is no basis for federal subject matter jurisdiction. Because the Complaint has a RICO claim that on its face is "neither clearly immaterial and made solely for the purpose of obtaining jurisdiction nor wholly insubstantial and frivolous," Lyndonville Sav. Bank & Trust Co. v. Lussier, 211 F.3d 697, 701 (2d Cir. 2000), there is subject matter jurisdiction over this action as of now.

271 F.3d 403, 404, 406 (2d Cir. 2001); Thomson-CSF, S.A. v. Am. Arbitration Assoc., 64 F.3d 773, 776 (2d Cir. 1995); Camferdam v. Ernst & Young Int'l, Inc., No. 02 Civ. 10100 (BSJ), 2004 WL 307292, at *6 (S.D.N.Y. Feb. 13, 2004).

[U]nder principles of estoppel, a non-signatory to an arbitration agreement may compel a signatory to that agreement to arbitrate a dispute where a careful review of the relationship among the parties, the contracts they signed, and the issues that had arisen among them discloses that the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed.

JLM Indus., 387 F.3d at 177 (citation omitted) (emphasis supplied). See also Denney v. BDO Seidman, L.L.P., 412 F.3d 58, 70 (2d Cir. 2005); Contec, 398 F.3d at 209; Choctaw, 271 F.3d at 406.

The Leeds Defendants argue that under this standard, they may compel Vaughn to arbitrate his claims against them, because he alleges a close relationship, in the form of a conspiracy, between both sets of defendants, and because the claims Vaughn raises against the Leeds Defendants are intertwined with the Agreement. Vaughn concedes that his claims against the Leeds Defendants are related to the Agreement, but argues that the relationship between the Leeds Defendants and the Prudential Defendants was not close enough to warrant estoppel in this case, because they did not have a relationship with each other independent of Vaughn's alleged conspiracy.

Vaughn's argument misconstrues the governing legal standard. The Second Circuit has held that a claim against an alleged co-conspirator may not "always be intertwined to a degree sufficient

to work an estoppel," and that "[t]he inquiry remains a fact-specific one." JLM Indus., 387 F.3d at 178 n.7 (emphasis supplied). Nonetheless, "[a]pplication of equitable estoppel is warranted when the signatory to the contract containing an arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." Denney, 412 F.3d at 70 (quoting Grigson v. Creative Artists Agency, L.L.C., 210 F.3d 524, 527 (5th Cir. 2000)). In a putative class action where the plaintiff taxpayers accused an accounting firm and a bank, among others, of conspiring to lure them into participating in unlawful tax shelter schemes, and the plaintiffs had an arbitration agreement with the accounting firm but not the bank, the Second Circuit held:

Having alleged in this RICO action that the [nonsignatory bank] and [signatory accounting firm] defendants acted in concert to defraud plaintiffs, and that defendants' fraud arose in connection with [the accounting firm's] tax-strategy advice, plaintiffs cannot now escape the consequences of those allegations by arguing that the [bank] and [accounting firm] defendants lack the requisite close relationship, or that plaintiffs' claims against the [bank] defendants are not connected to [the bank's] relationship with the accounting firm].

Denney, 412 F.3d at 70 (citation omitted). Vaughn's basic premise that Second Circuit precedent requires that the defendants have a close relationship independent of the alleged conspiracy is consequently incorrect.³

³ To the extent that Vaughn cites district court opinions that predate Denney for the proposition that a close relationship independent of the alleged conspiracy is required for a "close relationship," this Court respectfully declines to follow them.

Vaughn contends that the Leeds Defendants had a complex scheme to settle employment discrimination claims en masse, and that this scheme involved capping liability for employers such as the Prudential Defendants in exchange for direct payment of attorney's fees by the employers. He alleges that his employment discrimination claim was swept up by this scheme because the Leeds Defendants had a comprehensive, secret agreement with the Prudential Defendants to process his claim, among others, and that this agreement adversely affected the settlement of his claim. These allegations of civil RICO conspiracy involve close cooperation and collusion between Vaughn's employer and his lawyers. This theory of liability has been described elsewhere as one that "can only succeed" if the plaintiff proves his "allegation that all Defendants conspired and acted together." Camferdam, 2004 WL 307292, at *7.⁴ Vaughn therefore alleges precisely the type of "substantially interdependent and concerted misconduct" that estops him from avoiding arbitration of his claims with the Leeds Defendants. Denney, 412 F.3d at 70

See In re Currency Conversion Fee Antitrust Litig., 361 F. Supp. 2d 237, 264 (S.D.N.Y. 2005); Orange Chicken, LLC v. Nambe Mills, Inc., No. 00 Civ. 4730 (AGS), 2000 WL 1858556, at *5 (S.D.N.Y. Dec. 19, 2000).

⁴ In Camferdam, where the district court required taxpayers who had arbitration agreements with an accounting firm, and who were suing the accounting firm and a nonsignatory law firm for conspiring to create unlawful tax shelters on the taxpayers' behalf, to arbitrate claims against the law firm, the court also noted that the complaint alleged a "close relationship" between the entities involved, because "[a] civil conspiracy is a kind of partnership, in which each member becomes the agent of the other." Camferdam, 2004 WL 307292, at *6 (citation omitted).

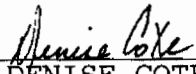
(citation omitted). The Leeds Defendants' motion to compel arbitration is therefore granted.

CONCLUSION

The defendants' motions to compel arbitration are granted. The case is stayed until the resolution of the arbitration proceedings and is transferred to the Court's suspense docket.

SO ORDERED:

Dated: New York, New York
August 12, 2005



DENISE COTE
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEFFREY S. VAUGHN, individually and on
behalf of those class members similarly
situated,

Plaintiff,

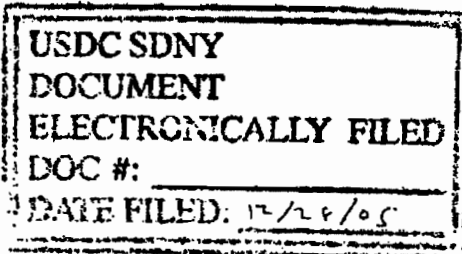
-v-

LEEDS, MORELLI & BROWN, P.C., LEEDS,
MORELLI & BROWN, L.L.P., LEEDS &
MORELLI, LEEDS, MORELLI & BROWN,
PRUDENTIAL SECURITIES, INC., PRUDENTIAL
FINANCIAL, INC., LENARD LEEDS, STEVEN
A. MORELLI, JEFFREY K. BROWN, and JOHN
DOES, JAMES VAGNINI, FREDERIC DAVID
OSTROVE, ROBERT JOHN VALLI, JR.,
DISCRIMINATION ON WALL STREET, INC. and
DISCRIMINATION ON WALL STREET
MANHATTAN, INC., and JOHN DOES, ESQS.
1-10 and JANE DOES, ESQS., 1-10 a
fictitious designation for presently
and unknown licensed attorneys,
professionals and/or unknown persons or
entities,

Defendants.

04 Civ. 8391 (DLC)

ORDER



DENISE COTE, District Judge:

Having reviewed letters from plaintiff, dated December 7 and
16, 2005 and from defendants, dated December 13, 14, 20, and two
dated December 15, 2005, it is hereby

ORDERED that the case remains stayed and on the Court's
suspense docket pursuant to the Opinion and Order dated August
12, 2005.

SO ORDERED:

Dated: New York, New York
December 27, 2005

Denise Cote
DENISE COTE
United States District Judge

EXHIBIT “F”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
JEFFREY S. VAUGHN, individually and on :
behalf of those class members similarly :
situated, :

Plaintiff, :

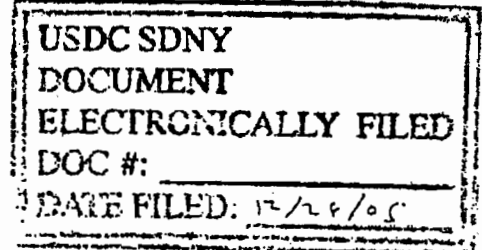
04 Civ. 8391 (DLC)

-v- :

ORDER

LEEDS, MORELLI & BROWN, P.C., LEEDS, :
MORELLI & BROWN, L.L.P., LEEDS & :
MORELLI, LEEDS, MORELLI & BROWN, :
PRUDENTIAL SECURITIES, INC., PRUDENTIAL :
FINANCIAL, INC., LENARD LEEDS, STEVEN :
A. MORELLI, JEFFREY K. BROWN, and JOHN :
DOES, JAMES VAGNINI, FREDERIC DAVID :
OSTROVE, ROBERT JOHN VALLI, JR., :
DISCRIMINATION ON WALL STREET, INC. and :
DISCRIMINATION ON WALL STREET :
MANHATTAN, INC., and JOHN DOES, ESQS. :
1-10 and JANE DOES, ESQS., 1-10 a :
fictitious designation for presently :
and unknown licensed attorneys, :
professionals and/or unknown persons or :
entities, :

Defendants. :
-----X



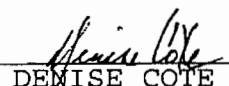
DENISE COTE, District Judge:

Having reviewed letters from plaintiff, dated December 7 and 16, 2005 and from defendants, dated December 13, 14, 20, and two dated December 15, 2005, it is hereby

ORDERED that the case remains stayed and on the Court's suspense docket pursuant to the Opinion and Order dated August 12, 2005.

SO ORDERED:

Dated: New York, New York
December 27, 2005



DENISE COTE
United States District Judge

EXHIBIT “G”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
JEFFREY S. VAUGHN, individually and on :
behalf of those class members similarly :
situated, :
:

Plaintiff, :

-v- :

LEEDS, MORELLI & BROWN, P.C., LEEDS, :
MORELLI & BROWN, L.L.P., LEEDS & :
MORELLI, LEEDS, MORELLI & BROWN, :
PRUDENTIAL SECURITIES, INC., PRUDENTIAL :
FINANCIAL, INC., LENARD LEEDS, STEVEN :
A. MORELLI, JEFFREY K. BROWN, and JOHN :
DOES, JAMES VAGNINI, FREDERIC DAVID :
OSTROVE, ROBERT JOHN VALLI, JR., :
DISCRIMINATION ON WALL STREET, INC. and :
DISCRIMINATION ON WALL STREET :
MANHATTAN, INC., and JOHN DOES, ESQS. :
1-10 and JANE DOES, ESQS., 1-10 a :
fictitious designation for presently :
and unknown licensed attorneys, :
professionals and/or unknown persons or :
entities, :

Defendants. :
:
-----X

04 Civ. 8391 (DLC)

MEMORANDUM OPINION
AND ORDER

<p>USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 3/20/06</p>

DENISE COTE, District Judge:

This Opinion and Order addresses an application for an extension to serve five individual defendants. On October 25, 2004, Jeffrey S. Vaughn ("Vaughn") filed a putative class action against his employer and Leeds, Morelli & Brown, P.C. ("Leeds"), the law firm he retained to represent him in an employment discrimination dispute with his employer. Vaughn's employer moved to compel arbitration, and through an Opinion and Order of August 12, 2005, that motion was granted and this case was stayed pending resolution of the arbitration proceeding. Vaughn v. Leeds, Morelli & Brown, P.C., et al., 04 Civ. 8391 (DLC), 2005 WL

1949468 (S.D.N.Y. Aug. 12, 2005).

The following actions relevant to the request for an extension to serve certain individual defendants associated with Leeds occurred before the stay was issued. On November 29, 2004, the Court endorsed a stipulation between plaintiff, Leeds and Jeffrey K. Brown ("Brown"), an attorney at Leeds, extending the two defendants' time to answer, with the agreement that neither defendant would assert any defense related to improper service. At some point before January 12, 2005, plaintiff's current counsel replaced his original attorney. An endorsement of January 12, 2005 approved an agreement between the plaintiff's current counsel and Leeds extending Leeds' time to respond to the plaintiff's amended complaint. At the request of plaintiff, the initial pretrial conference was adjourned from January 21 to March 4. On February 23, the agreement further extending Leeds' time to respond to the amended complaint was approved by the Court. Neither the January 12 nor February 23 document referred to Brown, who had been served, or to any of the individual defendants associated with Leeds who had yet to be served. In late February, the 120 days to effect service expired. The plaintiff made no request to extend the time to serve any defendant.

As of the conference on March 4, the plaintiff had still not served an amended complaint; he was ordered to file his first amended complaint by March 15, 2005. On April 22, 2005, the lawyers from Leeds and individual attorneys associated with that law firm (collectively "Leeds Defendants") moved to dismiss the

amended complaint, arguing inter alia that the plaintiff had not served five individual defendants (Lenard Leeds, Steven A. Morelli, Janes Vagnini, Frederic David Ostrove, Robert John Valli, Jr.) who are associated with the firm. In response to the motion to dismiss, Vaughn moved for an extension of time to serve these defendants. To this day, plaintiff has not filed any affidavit of service reflecting service of either the complaint or the amended complaint on any defendant.

It is undisputed that the only individual defendant associated with Leeds that was served by the plaintiff is Brown. The plaintiff has not provided any reason for failing to serve five individual defendants within the 120 days required by Rule 4, Fed. R. Civ. P., or made any showing of diligence. The plaintiff asserts that he relied on his first counsel to serve all defendants, but has not provided any explanation from that prior counsel for the failure to timely serve all defendants.

While it is no longer required that a plaintiff's request to extend time to serve be supported by good cause, see Henderson v. United States, 517 U.S. 654, 662 (1996) (citing to Advisory Committee Notes on Rule 4, Fed. R. Civ. P.), that change in the law does not make an inquiry into diligence or the circumstances surrounding the failure to serve irrelevant. If service is not waived, then a party is required to file proof with the Clerk of Court. Fed. R. Civ. P. 4(1). Any review of the docket sheet would have shown that no proof of service had been filed in this case. Moreover, a review of the stipulations entered between November 29 and February 23 would have shown that the only Leeds


Defendants who had executed stipulations were Leeds and Brown. Indeed, it was plaintiff's current counsel who executed the stipulations endorsed on January 12 and February 23, neither of which makes any reference to any individual defendant associated with Leeds. This reflects an utter lack of concern regarding the individual Leeds Defendants, including the issue of whether service had been made within the time allowed by the federal rules. Given the failure of the plaintiff to explain adequately the absence of timely service on the five individual defendants, their motion to dismiss is granted.

Conclusion

The motion by Lenard Leeds, Steven A. Morelli, James Vagnini, Federic David Ostrove, and Robert John Valli, Jr. to dismiss the complaint is granted. The remainder of the motion to dismiss filed by the Leeds Defendants is denied with leave to be renewed through a letter request filed within 30 days of the stay being lifted.

SO ORDERED:

Dated: New York, New York
March 20, 2006



DENISE COTE
United States District Judge